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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 301

LOUIS K. LIGGETT COMPANY ET AL., APPELLANTS,

vs.

J. M. LEE, ~~DOUGLAS AMOS~~, AS COMPTROLLER OF THE STATE OF FLORIDA; ~~H. B. CONERLY~~, AS TAX COLLECTOR OF THE STATE OF FLORIDA, ET AL., ETC.

R. H. MICKLER

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

FILED AUGUST 15, 1932.

(36,998)

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APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

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[fols. 1 & 2] TRANSCRIPT OF RECORD OF PROCEEDINGS IN THE

CIRCUIT COURT, SECOND JUDICIAL CIRCUIT, LEON COUNTY, FLORIDA

In the Suit of LOUIS K. LIGGETT COMPANY, a Corporation, et al., Complainants, and the NUNNALLY COMPANY, a Corporation, et al., Intervenors, against ERNEST AMOS, as Comptroller of the State of Florida, et al., Dependants, Therein Pending

RECITAL AS TO ORIGINAL BILL OF COMPLAINT, ETC.

On September 30, 1931, the Complainants filed their original bill of complaint.

On October 3, 1931, Paxson's Inc. a Corporation, filed its Petition and Intervention.

On October 6, 1931, the Defendants filed their Motion to Dismiss Complainants' Bill of Complaint.

On October 9, 1931, the Court made its order allowing Paxson's Inc. a Corporation to intervene.

On October 19, 1931, the Court made his Order dismissing the original bill of complaint, said order being recorded in Chancery Order Book 9, page 544, and being in the words and figures following:

Order dismissing original bill omitted in printing.

[fols. 3 9] On December 5th, 1931 the complainants filed Petition for Rehearing in words and figures following:

Petition for rehearing omitted in printing.

[fol. 10] On November 5, 1931, the Court made order granting Complainants a Rehearing, said order being recorded in Chancery Order Book 9, page 565, and being in the words and figures following:

Order granting rehearing omitted in printing.

[fols. 11-13] On November 12, 1931, Complainants filed Notice of Application for Leave to file Amended Bill and for a temporary restraining order, same being in the words and figures following:

Notice omitted in printing.

[fols. 14 & 15] On the 12th day of November, 1931, Defendants filed Objection to Filing Amended Bill in words and figures following:

Objection omitted in printing:

[fol. 16] In Circuit Court of Leon County, Florida

In Chancery

Louis K. Liggett Company, a Corporation; Winn & Lovett Grocery Company, a Corporation, and Paxson's, Inc., a Corporation, Complainants,

vs.

Ernest Amos, as Comptroller of the State of Florida; K. B. Council, as Tax Collector of Leon County, Florida, and R. F. Bowden, as Tax Collector of Duval County, Florida, Defendants

Amended Bill of Complaint—Filed Nov. 12, 1931

To one of the Honorable Judges of said Court, in chancery sitting:

Your Orators Louis K. Liggett Company, a Corporation, Winn & Lovett Grocery Company, a Corporation, and Paxson's Inc. a Corporation, Bring this their amended bill of complaint against Ernest Amos as Comptroller of the State of Florida, K. B. Council as Tax Collector of Leon County, Florida, and R. F. Bowden as Tax Collector of Duval County, Florida, defendants; and thereupon your orators complain and say:

I

That your orator Louis K. Liggett Company is a corporation organized and existing under the laws of the State of Massachusetts, and lawfully doing business in the State of Florida. That your orator Winn & Lovett Grocery Company is a corporation organized and existing and lawfully doing business under the laws of the State of Florida. That your orator Paxson's Inc. is a corporation organized and [fol. 17] existing under the laws of Florida, and lawfully doing business in the State of Florida. That the defendant Ernest Amos, Comptroller, is Comptroller of the State of Florida, having his official residence in Tallahassee, Florida, in the County where this suit is instituted; that the defendant R. B. Council, Tax Collector, is Tax Collector of Leon County, Florida, and a resident and citizen of said County; that the defendant R. F. Bowden, Tax Collector, is Tax Collector of Duval County, Florida, and is a citizen and resident of said Duval County.

II

That this suit is brought as a class suit, for the benefit of the complainants and all other merchants similarly situated who may desire to avail themselves of the benefit hereof, for the purpose of showing the invalidity and unconstitutionality of Chapter 15624 Laws of Florida, 1931, also known as Committee Substitute for House Bill No. 8-X. That said Act affects every merchant doing business in the State of Florida, whether operating one store or more than one store. That the license tax on single store operators is practically double what it has heretofore been under sec. 926 Revised General Statutes of Florida. That as to owners and operators of more than one store said Act undertakes to provide a graduated scale of License fees, State, County and municipal in an ascending ratio. That said Act also undertakes by an ascending scale of arbitrary license fees to make very great discriminations between merchants owning and operating stores in only one County and those operating stores in different counties of the State. That the number of merchants operating in the State of Florida is so great that it would be next to impossible and [fol. 18] impracticable to name all of them in one bill of complaint, or to describe their several methods of doing

business, or the several conditions under which they do business. Nevertheless, all such merchants wherever situated have similar rights and similar causes to complain of the provisions and operation of said Act. That the complainants and all other merchants in the State of Florida are similarly interested in preventing the enforcement of said Act.

III

Your orators would further show that your orator Louis K. Liggett Company owns and operates twenty-two (22) retail drug stores in the State of Florida, situated as follows:

Hillsborough County	3
Duval County	3
Dade County	7
Orange County	1
Polk County	2
Sarasota County	1
Suwannee County	1
Brevard County	2
Palm Beach County	1
Pinellas County	1

That your orator Winn & Lovett Grocery Company owns and operates fifty-eight (58) retail grocery stores in the State of Florida, situated as follows:

Duval County	23
Molusia County	6
Marion County	2
Lake County	2
Columbia County	1
St. Johns County	1
Putnam County	1
Taylor County	1
Suwannee County	1
Osceola County	1
Alachua County	1
Leon County	1
Brevard County	3
Indian River County	1
St. Lucie County	2

Martin County	1
Orange County	4
Seminole County	4
Polk County	2

[fol. 19] That your orator Paxson's Inc., owns and operates eight (8) retail shoe stores, one in the State of Georgia, and seven (7) in the State of Florida, situated as follows:

Duval County	3
Hillsborough County	1
Volusia County	1
Palm Beach County	1
Alachua County	1

IV

Your orators would further show that each of the Florida stores operated by them severally, as aforesaid, constitutes a "store" within the meaning of sec. 8 of said chapter 15624 Laws of Florida, 1931, also known as Committee Substitute for House Bill No. 8-X, passed at the first extra Session of the Florida Legislature which convened in the year 1931. That the said Act of the Legislature attempted to impose sundry arbitrary and unreasonable discriminations and tax burdens upon your orators and all other merchants similarly situated, all of which will be more particularly hereinafter shown. But your orators aver first of all, that, as appears by the Journals of said extra session of said Legislature, the said Act was not passed in the manner and form required by sec. 17 art. III, and sec. 8 art. IV of the Constitution of Florida, on which account, as your orators are advised and believe, and so aver, said Act never becomes a law, and has no binding force upon your orators or other merchants in the State of Florida similarly situated. That on June 6, 1931, the Governor of Florida issued his proclamation convening the Legislature in extraordinary session, in accordance with sec. 8, art. IV, of the Florida Constitution, and in his proclamation the Governor stated four purposes for which the Legislature was convened, i. e.:

[fol. 20] "1. To provide revenues apart from the general property tax to meet the requirements of the schools,

it is an idle ceremony to make appropriations without revenue to meet them.

2. To provide new sources of revenue, not to increase our burdens, but solely for the purpose of relieving the General Property Tax, particularly the State Ad Valorem.

3. The allocation of our present Gas Tax on a formula that is fair throughout the State and that will end contention between big and little counties. I caution you against arbitrary standards and again urge the Federal allocation as a sound basis.

4. Better machinery for tax collection and a Tax Cimmission of three members, authorized to adjust and assi-t in the collection of past due taxes, place on ours rolls property now escaping taxations, assist in working out our tax problems and give stability to our entire tax structure."

That said chapter 15624, Committee Substitute for House Bill No. 8-X, cannot come within either the third or fourth purposes above quoted. Neither can said Bill come within the second purpose above quoted for the reason that license taxes upon merchants was not a new sort of revenue, all merchants being theretofore subject to license taxes, pursuant to the terms of sec. 926 Revised General Statutes of Florida (Sec. 1197 Compiled General Laws of Florida). That said Bill did not and could not come within the first purpose of the Governor's proclamation above quoted, for the reason that the revenue to be derived from said Act or Bill was not appropriated to meet the requirements of schools. On the contrary, the State revenue to be derived therefrom was to go into the general funds of the State, and by sec. 11 of said Bill the County license tax was to become a part of the general funds of the County, and the municipal license taxes provided for by the same section were to become the general funds of the several municipalities of the State. That said Bill, not being [fol. 21] within the special purposes defined by the Governor's proclamation, as aforesaid, it was requisite that each "legislative step" or "legislative business" transacted in the matter of the passage of said Act should be concurred in by a two-thirds vote of the respective Houses of the Legislature where such legislative steps were taken, such

eing the requirement of sec. 8, art. IV of the Florida Con-
itution. That it appears by the House Journal of June 15,
31, page 9, that the introduction in the House of Com-
ittee Substitute for House Bill No. 8-X was agreed to by
two-thirds vote, and said Bill read for the first time by
s title only. But it also appears by the same page of said
ournal, that after being so read for the first time, motion
as made to recommit said Bill to the House Committee on
inance and Taxation, which was agreed to, but not by a
vo-thirds vote. It also appears by the House Journal of
une 19, 1931, page 27, that Committee Substitute for
ouse Bill No. 8-X, sec. 8 was amended by adding the fol-
wing thereto:

"Provided, however, the term "store" shall not include
lling stations engaged exclusively in the sale of gasoline
nd other petroleum products."

Which amendment was agreed to, but not by a two-thirds
ote. On the same page of the same Journal it also appears
hat two other amendments to said Bill were made at the
ame time and agreed to, but not by a two-thirds vote.
That by the Senate Journal of June 20, 1931, page 7, it
ppears that said House Bill was reported to the Senate
nd that—

"Committee Substitute for House Bill No. 8-X, contained
n the above message, was permitted to be introduced into
he Senate by the Constitutional two-thirds vote."

Thus recognising that said Bill was not within the purposes
f the Governor's proclamation convening said extra
[fol. 22] session. That, as appears by the Senate Journal
f June 23, 1931, pages 2 and 3, the Senate Committee on
inance and Taxation reported said Committee Substitute
or House Bill No. 8-X, with a proposed amendment to
trike out the brack-ts of arbitrary state license fees con-
ained in Sec. 8 of said House Bill, and to substitute in lieu
hereof an entirely new set of brackets creating a different
cale of license fees to be collected according to whether the
erchant does business wholly in one County, or in more
han one County. That, as appears by the Senate Journal
f June 24, 1931, page 6, said Bill was read in the Senate a
econd time in full, and the aforesaid amendment recom-

mended by the Senate Committee on Finance and Taxation was adopted, but not by a two-thirds vote. That at the same time another amendment to sec. 14 of said Bill was made in the Senate and adopted, but not by a two-thirds vote. That, as appears by the House Journal of June 24, 1931, pages 16 and 17, the House received a Senate message, reporting that Committee Substitute for House-Bill No. 8-X, with two Senate amendments had been passed by the Senate. Whereupon motion was made to concur in said Senate amendment #1, amending sec. 5 of the Bill, which was agreed to, but not by a two-thirds vote. That by another motion, the second Senate amendment, that is to say amending sec. 14 of the Bill, was agreed to by the House, but not by a two-thirds vote. That thereupon said Bill, with the Senate Amendments concurred in in the manner aforesaid, was ordered referred to the Committee on Engrossed Bills—at least that appears to have been the intention, though the number of the Bill was omitted in making the reference, as appears by the House Journal of June 24, page 17. That afterwards, as appears by the [fol. 23] House Journal of June 25, 1931, page 3, the Committee on Engrossed Bills reported that said Committee Substitute for House Bill No. 8-X has been properly engrossed; and thereupon said Bill was referred to the Committee on Enrolled Bills. Thereafter, as appears by the Journals of the House and Senate, said Bill was signed by the presiding officers of the House and Senate, and by the Chief Clerk of the House and the Secretary of the Senate respectively. But no roll call upon said Bills was had in the house after the Senate amendments as aforesaid, nor did the House, after receiving the Bill with amendments back from the Senate, ever take any further action of any sort with respect thereto by a two-thirds vote.

V

Your orators would further show that the present day chain store or multiple store method of merchandising is a product of rapidly changing economic conditions, which have developed since the World War. That the economic changes which have caused the rapid development of chain store merchandising have been fostered and encouraged by the federal and state governments of the United States.

That said Chap. 15624 Laws of Florida, 1931, is only a part of a widespread campaign, having for its chief purpose the destruction or breaking up of chain store merchandising, for the benefit and protection of a class of inefficient and unprogressive merchants, who refuse to readjust their businesses so as to conform to those changes in economic conditions developed since the World War, as aforesaid. That said Act carried evidence of its purpose and character, as aforesaid, upon its face, in addition to which the history of chain store merchandising, the economic changes since the World War, and the widespread [fol. 24] anti-chain store campaign developed in the last few years, of which said Act is a part, all show that said Act, under the guise of a revenue measure, was designed and intended to destroy or arbitrarily burden a method of merchandising which has become an economic necessity.

VI

Your orators would further show that the chain store method of merchandising in America dates back to the hundreds of trading posts established by the Hudson Bay Company, during the colonial period. That the earliest of the modern chain stores was started by George Huntington Hartford, a clerk of George Gilman, in 1859. That from the one store started by Hartford there originated the Great Atlantic & Pacific Tea Company, which in 1930 had more than fifteen thousand retail grocery stores in the United States. That following the depression resulting from the Civil War, Frank W. Woolworth, a $5.00 a week clerk in the small town of Watertown, New York, opened his first store, from which has developed the national chain known as Woolworth's 5 & 10 Cent Stores. That during the succeeding years up to 1900 many other great merchants founded chain store systems, such as Kress, Penney, Kroger and others. That in almost every instance what are now nationally known chain stores had their beginnings with single stores. That up to 1900 the chain store method of merchandising was of slow growth, each merchant using his earnings to expand his business with added stores. That during the period from 1900 to 1919, with the coming of the automobile and a large shifting of population from the country to the cities, the

chain stores took on a more rapid growth. That during [fol. 25] the World War the resources of the United States were mobilized for mass production, for mass consumption, after mass transportation. That the factories and producers were developed to the highest possible state of capacity and efficiency. That after the close of the War that vast machinery for production found itself without adequate outlet, and during the years 1920, 1921 and 1922, a great financial depression came over the whole country similar to that which now exists. Thousands of merchants found themselves heavily loaded with stocks of goods bought at war prices, with the result that bankruptcies were general, and an era of hand to mouth buying ensued, compelling factories and sources of production to shut down or greatly curtail their output. Money became scarce, and the consumer was seeking where he could buy the necessities of life at the lowest possible figure. In conjunction with these conditions, Mr. Hoover, now President of the United States, became Secretary of Commerce. He had been Food Administrator during the War, and had become accustomed to dealing with mass production and mass distribution direct from producer to consumer. When he became Secretary of Commerce he found an appalling waste between the producer and the consumer, and this became more acute by the depression and era of hand to mouth buying which occurred during 1920 and 1922 as aforesaid. Under these conditions Mr. Hoover set himself to the task of eliminating such economic waste. That after having spent several years of effort to solve such problems, Mr. Hoover, in an address before the Chamber of Commerce of the United States, at Washington, D. C., January 14, 1925, complaining of economic wastes, roughly catalogued them as follows:

[fol. 26.] 1. Waste from the speculation, relaxation of effort and extravagance of booms with the infinite waste and unemployment and bankruptcy which comes with the inevitable slump.

2. Waste from excessive seasonal character of production and distribution.

3. Waste caused through lack of information as to national stocks, of production and consumption with its attendant risk and speculation.

4. Waste from lack of standards of quality and grades.

5. Waste from unnecessary multiplication of terms, sizes and varieties.

6. Waste from lack of uniformity of business practices in terms and documents, with resultant misunderstandings, frauds and dis-utes.

7. Waste due to deterioration of commodities.

8. Waste due to inadequate transportation and terminals, to inefficient loading and shipping and unnecessary haulage.

9. Waste due to disorderly marketing, particularly of perishables, with its attendant gluts and famines.

10. Waste due to too many links in the distribution chain and too many chains in the system.

11. Waste due to bad credits.

12. Waste due to destructive competition of people who are in fact exhausting their capital through little understanding of the fundamentals of business in which they are engaged.

13. Waste due to enormous expenditure of effort and money in advertising and sales promotion effort, without adequate basic information on which to base sales promotion.

14. Waste due to unfair practices of a small minority.

15. A multitude of wastes in use of materials, in un*usu*-ecessary fire destruction, in traffic*e* accidents, and many other directions.

That the chain stores of the country, with their methods of merchandising as more particularly hereinafter explained, answered the call of Mr. Hoover even before the [fol. 27] speech made as aforesaid, and during the past decade have succeeded in saving many Billions of dollars to the consumers of the United States, which otherwise would have been economic waste. That when Mr. Hoover was Secretary of Commerce he stated that at least eight billion dollars was wasted annually through ineffi-

cient marketing, and it was then estimated that only about one-third of every American Dollar spent in the stores covered the actual cost of production, while the other two thirds was absorbed in the process of distribution. That in a recent investigation made by Harvard Bureau of Business Research it has been found that in the grocery field chain stores are able to operate on less than 20% of the consumers' dollar, of which about 1¾% is net profit, leaving 80% to go to the producer; also that similar savings have been accomplished in other fields by chain stores in other classes of merchandise, so that chain store methods of merchandising have gone a long way towards eliminating the tragic economic waste of which Mr. Hoover spoke. That the public policy so inaugurated by Mr. Hoover, was also fostered by State governments, including the State of Florida, as evidenced by Chap. 9300 Laws of Florida, 1923, authorizing the formation of cooperative marketing associations, the declared policy of which was to eliminate speculation and waste between the producer and the consumer.

Your orators would further show that the more general use of motor vehicles during the last decade, and the development of State and national highways have also had a material influence on the growth and development of the chain store method of merchandising. That two decades ago the shopping district of any City of consequence was in a comparatively restricted area, for groceries, as well as dry goods and other retail merchandise. But with the advent of the automobile residential districts [fol. 28] spread out over wide territory, and as the use of motor vehicles increased the congestion in the shopping district became so great that the consumers demanded a more convenient place to shop, with the result that small shopping *centers* began to develop, widely scattered, convenient to residential districts. That in the grocery line the chain store was a natural means of serving such individual community centers, and the same is true of the *drug* line. That on account of this economic change the so-called independent single store operators would have a monopoly in such small trading centers if the chain store operator is prohibited by discriminatory legislation from having more than one store.

Your orators would farther show that the State and Federal Governments have built hard surfaced highways throughout the country at public expense, including the State of Florida, so that during the last decade farmers and residents of small towns can more easily reach the large trading center, where they can take advantage of the lower cost for standard merchandise offered by chain store merchants; whereas, on the other hand, the same highways afford facilities for establishing chain store units in small towns, and serving them quickly and efficiently by motor truck transportation from warehouse centers. That merchandising experts, after having made exhaustive field tests in the grocery business, estimate that on an average throughout the United States customers of chain store grocers are able to save anywhere from 10 to 14 per cent on the selling price of the merchandise. That chain store grocers in the United States did a total business in 1930 of $3,500,000,000. That on the basis of a 10% saving, this means a saving to consumers in the United States in one year, on groceries alone, of $350,000,000.00. That in times of depression such as these the method of merchandising [fol. 29] which produces such savings to the consuming public becomes an economic necessity.

That during the past five years there has been a concerted and wide spread anti-chain store movement in the United States, similar to the anti-department store agitation in 1895, and later, the anti-mail order house agitation. That the brunt of the campaign against chain stores has been carried on by three classes of agitators: (1) middlemen who absorbed a large part of the consumers' dollar in getting commodities from the producer to the consumer; (2) self appointed champions of the anti-chain store movement; and (3) politicians. That the self appointed champions received large rewards in the shape of fees, dues, assessments, subscriptions and promotional expenses. That the politician became an agitator because it appeared to be a vote getting process. But notwithstanding agitation developed from these several sources, the more capable and forward looking merchants began cleaning house, reorganizing their stores, installing modern equipment, and adopting the best features of merchandising which has been shown them by chain store operators. That Chapter 15624,

Laws of Florida, 1931, is a product of such anti-chain store agitation, and, if upheld, will bring back, or tend to bring back, those economic wastes which the federal and state governments have during the last decade been endeavoring to eliminate. That the effect of said Act will be to stifle competition and restrict your orators in engaging in free trade and commerce with the citizens of this State, contrary to sec. 1 of the Florida Declaration of Rights, and contrary to the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution.

[fol. 30] VII

Your orators would further show that as applied to each of them severally, and as applied to the owners and operators of other stores in the State of Florida similarly situated, the said Chap. 15624, Laws of Florida, 1931, violate the "equal rights" clauses and the "due process" clauses of sections 1, 4 and 12 of the Florida Declaration of Rights, and the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution in the following particulars:

(a) That the sub sections 1, 2, 4, 6, 8 and 10 of sec. 5 of said Act create oppressive, arbitrary and unreasonable discriminations between single store merchants and your orators severally, contrary to the provisions of the state and federal constitutions as aforesaid. That the arbitrary state license fees prescribed by sec. 5 (1) of said Act, to be imposed upon the opening, establishing, operating and maintaining of one store, regardless of size, as, for instance, Cohen Brothers, the largest department store in the City of Jacksonville, Florida, covering a whole block, is $5.00, whereas upon each of the fifty-eight stores owned and operated by your orator Winn & Lovett Grocery Company, in the State of Florida, being in excess of 50 and not more than 75, located in different counties, the arbitrary annual state license fee is $40.00 per store in excess of fifty stores, and for lesser graduated amounts for each store below fifty, as provided by the sundry sub-sections of sec. 5 of said Act. That the arbitrary annual state license fee as applied to your orator Louis K. Liggett Company, owning and operating 22 stores in different counties, as aforesaid, is $20.00 for each store in excess of fifteen, and for

lesser graduated amounts for each store below fifteen, as [fol. 31] provided for in the sub-sections to sec. 5 of said Act. That like arbitrary differences exist between a single shoe store operator and your orator, Paxson's, Inc., owning and operating seven shoe stores in different Counties in Florida, as aforesaid. That the particular discriminations aforesaid are predicated purely upon the number of roofs under which a merchant does business.

(b) That sub-sections 1 to 11, inclusive, of sec. 5 of said Act create oppressive, arbitrary and unreasonable discriminations between merchants doing business in one County only, and merchants doing business in different counties of the State of Florida (as is the case of your orators in this suit), contrary to the provisions of the state and federal constitutions severally as aforesaid.

That in the ascending brackets of sec. 5 of said Act, from one to more than seventy-five stores, the arbitrary state license fee to be charged is from fifty to twenty-five per cent higher if the stores of a chain or multiple store operator are operated in more than one County than if the same number of stores are operated by a chain or multiple store operator in one county only. That, as more particularly hereinafter shown, one Georgia C. Blume owns and operates in Duval County, Florida, thirty-seven grocery stores, known as "Whiddon's Stores," similar to the twenty-three grocery stores in Duval County, Florida owned and operated by your orator, Winn & Lovett Grocery Company. That under the schedule of arbitrary state license fees provided by the sub-sections of sec. 5 of said Act, [fol. 32] your orator, Winn & Lovett Grocery Company, on each of its twenty-three grocery stores operated in Duval County, Florida, is required to pay an arbitrary state license fee of $24.74 per store, in addition to $3.00 per $1,000.00 on stock carried, whereas the arbitrary state license fee chargeable to each of the thirty-seven Whiddon Stores, operated wholly in said County, as aforesaid, under the schedule provided for under said Act, is $13.78 per store. That, as more particularly hereinafter shown, the Whiddon grocery stores are operated under precisely the same circumstances and in the same manner as the grocery stores operated by your orator, Winn & Lovett Grocery Company, as aforesaid. That similar discriminations exist

under said Act as between each of your other orators operating stores in more than one County, and similar merchants operating more than one store, drug store or shoe store, as the case may be, in only one county. And your orators aver that no justification whatsoever can be found for such further oppressive, arbitrary and unreasonable sub-classification, based solely upon the fact that the merchant does business in more than one county of this State.

(c) That sec. 11 of said Act in undertaking to describe the amount of county license fees and municipal license fees payable by all merchants in the State of Florida, including chain or multiple store merchants, uses as a basis therefor the graduated scale of arbitrary state license fees provided for in subsections 1 to 11, inclusive, of sec. 5 of said Act, save that County and municipal license fees are to be calculated upon the number of stores of each merchant found in the particular county or municipality, without regard to the number of stores that may be owned by [fol. 33] such chain or multiple store operator in other counties or municipalities. That with this exception as to the basis of calculation, sec. 11 of said Act is oppressive, arbitrary and unreasonable, and violates the aforesaid provisions of the State and Federal constitutions severally for the same reasons as pointed out aforesaid with respect to sec. 5 of said Act.

(d) That the provisions of sec. 8, last clause of sec. 5 and sec. 2 of said Act, exempting wholesale merchants, who remain subject to the license taxes provided for by sec. 926, revised General Statutes of Florida (sec. 1197 C. G. L.) create oppressive, arbitrary and unreasonable discriminations against all multiple store merchants who own and operate warehouses in the State of Florida, that stand in the same relation to their several retail units in this State which the wholesale merchants bear to the several retail merchants, contrary to the provisions of the state and federal constitutions severally as aforesaid. That by sec. 8 of said Act, defining the term "store," the name is made applicable only to owners and operators of stores as defined in said Act—

"in which goods, wares and merchandise of any kind are sold *at retail*."

That, being so limited, said Act has no application to stores in which goods, wares and merchandise of any kind are sold at wholesale. That by the last clause of sec. 5 of said Act all merchants, in addition to the arbitrary state license fees provided in subsections 1 to 11, inclusive, of said sec. 5, are required to pay an additional state license fee of

"$3.00 for each and every $1,000.00 of value of stock carried in each store or *for sale in each such store.*"

[fol. 34] That the words "for sale in each such store" are interpreted by the provisions of sec. 2 of said Act, requiring a sworn return by each applicant for a license of the full actual value of the stock of goods, wares, merchandise and commodities—

"from which sales are to be made, including all goods, wares, merchandise and commodities owned by the merchants and held in storage to be sold in or through such store."

That by combination of the provisions of sees. 5 and 2 last quoted, said Act undertakes to impose upon your orator Winn & Lovett Grocery Company, owning a principal warehouse in Jacksonville, Florida, and another in Sanford, Florida, a license fee of $3.00 per $1,000.00 on all merchandise carried in warehouse for sale through its several 38 retail units; whereas no such burden is imposed upon wholesale grocery companies supplying singly owned and operated grocery stores in this State. That the provisions of said Act last above mentioned in like manner create the same discriminations against other chain or multiple store operators owning and operating warehouses in this State for the same purpose as the warehouses owned and operated by your orator, Winn & Lovett Grocery Company, as aforesaid.

(e) That the proviso contained in sec. 8 of said Act, undertaking to exempt filling stations engaged exclusively in the sale of gasoline and other petroleum products, creates an oppressive, arbitrary and unreasonable classification and discrimination against the owners of all other stores as defined in said Act, contrary to the aforesaid provisions of the State and federal constitutions severally. That section

[fol. 35] 8 of said Act, after defining the term "store," as used in said Act, carries a proviso to the effect that the term "store"—

"shall not include filling stations engaged exclusively in the sale of gasoline or other petroleum products."

Whereas there is no reasonable ground for such exemption as applied to chain or multiple store operators such as your orators, and much less as to chain or multiple store operators of filling stations not engaged exclusively in the sale of gasoline or other petroleum products. That there are many oil companies operating chains of filling stations in the State of Florida, one of which is the Standard Oil Company, and that Company sells at such stations tires and tubes. That other Oil Companies owning chains of filling stations in the State of Florida sell automobile accessories, and some sell cold drinks, fruit, chewing gum and the like; all of which would come within the provisions of said Act where they do not confine their sales exclusively to the sale of gasoline or other petroleum products.

(f) That sec. 2 of said Act requires that the procuring of the initial license under said Act the applicant shall make a return of the full actual value of the stock of goods, wares, merchandise and commodities from which sales are to be made, including all goods, wares, merchandise and commodities owned by the applicant and held in storage, to be sold in or through such store, under oath, and the making of such sworn returns is a condition precedent to the obtaining of a license. That section 9 of said Act provided over penalties for the violation of any provision thereof, each day's violation to constitute a separate and distinct offense. That sec. 4 of said Act does not in terms provide [fol. 36] for compulsory return of the full actual value, etc., but vests in the Comptroller the power to prescribe the forms on which application for renewing licenses shall be made, thus placing it within his authority to require sworn returns the same as under sec. 2 of said Act. That the defendant Comptroller has already prescribed and distributed forms to the Tax Collectors in the State of Florida, and they in turn to the merchants of the State, requiring such sworn returns. That there is no law in the State of Florida providing for compulsory sworn returns of personal property, tangible or intangible, as the basis for the

imposition of an ad valorem tax. That the provisions of said Act last aforesaid create an oppressive, arbitrary and unreasonable classification, in that the same authorize the Tax Collectors of the several counties, or the Comptroller, as the case may be, in the event certain defaults are made for certain periods, as defined in sec. 4 of said Act, in the application for a*n* procurement of a license, to impose a penalty of twenty-five (25%) per cent of the license tax provided by said Act. That the additional tax so provided for, and to be imposed by said officials, is a further deprivation to your orators, and other merchants similarly situated, of their property without due process of law, and of the equal protection of the laws, contrary to the provisions of the state and federal constitutions severally, as aforesaid.

VIII

Your orators would further show that your orator Louis K. Liggett Company operates its drug stores in the several counties of Florida as aforesaid in the same way that other [fol. 37] drug stores in the State are operated, whether owned singly or otherwise. That the stocks of merchandise consist principally of medicines, drugs, surgical and hospital supplies, toilet goods, soaps, candies, cigars, cigarettes, chewing gum, notions, dairy products, fruits, food stuffs and the like. That the merchandise dispensed at the soda fountains in such stores is very largely purchased locally where each respective store is situated, consisting of such items as milk, foodstuffs, ice cream, fruits, nuts, etc. That the owners of single drug stores purchase the same sort of merchandise in the same way and through the same sources. That your orator Louis K. Liggett Company purchases cigars, cigarettes and tobaccos from the manufacturers of those products, and shipments thereof are made direct to the stores where needed, substantially in the same manner that those classes of goods are purchased and received by the owners of single drug stores. That some of the medicines and toilet goods are first purchased by your orator, Louis K. Liggett Company, and collected in its principal warehouse in New York City, from which shipments in interstate commerce are made weekly or bi-monthly, on requisitions by the individual stores located in the State of Florida and in other States. That such frequent shipments are necessary in or-

der to permit more rapid turn over, keep fresh goods in said retail units, and prevent the accumulation of old or shelf worn stock. That the owner of a single drug store ordinarily buys his supplies of medicines and toilet articles from the manufacturers, jobbers or wholesalers, and shipments are made either from some factory or some Florida wholesale warehouse. That stocks of candies, chewing gum and the like are in part supplied from the New York central warehouse, and in part forwarded direct from the factories, all moving in interstate commerce. That there is [fol. 38] no substantial difference between the complainant's method of doing business and the methods used by single drug store owners. And this complainant Louis K. Liggett Company further says that it has other competitors besides drug stores singly owned, in the several towns where this complainant's stores are located—that is to say, department stores, who handle many articles and classes of merchandise, candies, cigars, toilet articles and the like, which are ordinarily handled in each of this complainant's drug stores. That cigar stores handle cigars, cigarettes and tobaccos, and other like merchandise carried in the stocks of this complainant. That confectioners and candy stores carry candies, nuts, confections and soda fountain supplies. That none of such competitors, if operating only one store, are subjected to the very great additional burdens and discriminations attempted to be created by the aforesaid Act, particularized in the preceding section of this Bill. That no business advantage results to this complainant by buying merchandise in large quantities and centralizing the same in a central warehouse, but the operation of such central warehouse involves the expense of the capital invested in such stock of merchandise centrally located, the interest thereon, the taxes and insurance on such merchandise, investment in warehouse, and the freight paid from such warehouse to the several stores. None of these items of expense or burdens are borne by the owners of single drug stores, who ordinarily purchase their merchandise locally from brokers or wholesalers, as above set forth.

That none of the stores operated by this complainant in the State of Florida increase the fire hazards, or endanger the health or morale of the community, or require increased [fol. 39] or additional police protection, different from the

stores operated by other druggists or merchants doing a similar business, or handling other merchandise. That the aforesaid Act of the legislature was not intended as a police measure. On the contrary, said Act was designed and intended as a restriction and prohibition on the so-called chain method of owning and operating drug stores, and other businesses of similar character. That the means to that end was the imposition of the many discriminations and additional burdens of tax pointed out in the preceding section of this Bill. That solely by reason of the fact that Louis K. Liggett Company owns twenty-two drug stores located in different Counties of Florida, the average arbitrary state license fee, exclusive of the $3.00 per $1,000.00 on stock carried, assessable to each Liggett store under said Act, is $16.00 per store; whereas drug stores singly owned and competing with such Liggett stores, doing the same type and character of business, and carried on in substantially the same manner, are each taxed with an arbitrary state license fee of $5.00 only. That the 22 Liggett stores operated in Florida, as aforesaid, are burdened with arbitrary state license fees in the aggregate amount of $355.00—whereas 22 individually *and operated* owned drug stores, competing with the Liggett stores, as aforesaid, are accessable with total arbitrary state license fees as aforesaid in the sum of only $110.00. That such discrimination is oppressive, arbitrary and unreasonable, and without just basis. That as further illustrating the discrimination created by said Act, your orator, Louis K. Liggett Company, avers that the drug store is Miami, Florida, known as the [fol. 40] Red Cross Pharmacy, doing a larger drug business, similar to that of your complainant, and, as your orator is informed and believes, the largest drug business in Florida, will pay under said Act an arbitrary state license fee of only $5.00, because the owners operates no other drug store in the state; whereas this complainant operating the same character of drug stores in that vicinity is charged with an arbitrary license fee on each of said stores in the sum of $16.00. That as further illustrating the same proposition, this complainant avers that McElroy's Drug Store, operated in the City of Orlando, Florida, does as much or more business than any Liggett store in said City—nevertheless, said McElroy store, on account of the owner not owning and operating any other drug store,

is assessed under said Act with an arbitrary state license fee of only $5.00, and the Liggett Stores operated in that community by this Complainant are each assessed under said Act with an arbitrary state license fee of $16.00 for doing precisely the same kind of business.

XX

Your orators would further show that your orator Louis K. Liggett Company has competition in the State of Florida, not only from the individually owned drug stores, as mentioned in the last preceeding paragraph, but also from a great number of individually owned, but cooperatively operated drug stores, affiliated with McKesson & Robbins, Inc., wholesale dealer in drugs, toilet articles, and other goods, wares and merchandise, operating throughout the United States. That the drug stores so affiliated with McKesson & Robbins constitute what is commonly known as a "voluntary chain" of stores, but which would be more *porperly* designated as a "cooperative chain." That in 1928 said McKesson & Robbins, Inc., had up to that time merged fifteen wholesale druggists, who had contact [fol. 41] with fifty-five per cent (55%) of the independent or singly owned drug stores in the United States, and by its combined sales force, under direct control of a single organization, comprised one of the largest selling organizations in the world. That said McKesson & Robbins, Inc. were primarily manufacturers of drugs, whose laboratories and manufacturing plants are situated at Bridgeport, Conn., covering acres of ground. That in the handbook of the McKesson retail stores, distributed in 1931, at page 63, it is stated that McKesson & Robbins have now organized sixty-seven (67) wholesale distributors in the United States, whose business it is to serve the independent druggists of the nation. That the aforesaid manufacturer-wholesale-retailer combination is the production and distribution of drugs is the very personification of mass merchandising, and enables the individual single store owners affiliated therewith to sell merchandise at retail under the same terms and under the same conditions as those established by chain store systems and department stores. That in such McKesson retail drug stores the consumer can find in almost any neighborhood in the United

States drugs at the same price and as extensively advertised as in chain drug stores. That the wide distribution of wholesale establishments owned and/or controlled by McKesson & Robbins is shown by a map appearing — pages 66-67 of the 1931 handbook, copy of which map is hereto attached marked exhibit 1, and made a part hereof. That the emblem on said map with the words:

"McKesson Service, the Standard of Quality,"

is uniformly found displayed in front of every retail store affiliated with the McKesson & Robbins, Inc. That the [fol. 42] specific locations of the wholesale distributing points of McKesson & Robbins, Inc. throughout the United States are shown on pages 94 and 95 of the said handbook, copy of which pages are hereto attached, marked Exhibit 2, and made a part hereof. That according to said exhibit 2 said McKesson & Robbins, Inc. have four wholesale distributing points in the State of Florida, i. e., Jacksonville, Tampa, Miami and Orlando. That said McKesson system consists of an arrangement whereby the manufacturers, McKesson & Robbins, Inc. either purchase outright, or secure control of wholesale druggists in the different states, such as the Groover-Stewart Drug Company formerly was, and the wholesale druggist so acquired in turn affiliates with the retail druggists in the respective territories where such wholesale druggists have distributing warehouses. That the wholesale distributor at the several points (four in Florida as aforesaid), enter into contracts or arrangements with the owners and operators of singly owned drug stores whereby such single drug store owners agree to purchase from such distributor in the State of Florida, in that locality, all of the drugs, toilet articles, and other goods handled in drug stores, or such of them as may be carried and sold by the distributing warehouse, in consideration of which the distributor of the said McKesson system agrees to give to such drug store owner whatever benefit may arise from the volume resulting from his purchases combined with the purchases of all other retailers of drugs affiliated with said system. That such wholesale distributor also agrees to and does furnish to each such retail store owner the benefit of group advertising, including national radio advertising, and merchandising service supplied by and through said McKesson organization.

[fol. 43] That there are operated in the City of Jacksonville, Florida, 35 individually owned drug stores affiliated with the said McKesson System, who get their supplies through the warehouse of the McKesson-Groover-Stewart Drug Company, Jacksonville, Fla. and who receive the benefit of the buying service, advertising service, and other advantages aforesaid by virtue of affiliation with the McKesson Organization. That at Orlando, Tampa, Miami, and other points in the State of Florida, there are large number of other individually owned drug stores affiliated with the said McKesson system in the same way. That the total number of independent drug stores in the United States and elsewhere in like manner affiliated with said McKesson system, is 57,000. This fact was broadcasted to the world in a McKesson radio program on November 3, 1931. That all of such drug stores so affiliated with said system are competitors of the drug stores owned and operated by your orator Louis K. Liggett Company, in Florida and other States, as aforesaid. That the said McKesson retail stores are able to purchase merchandise substantially at the same prices and on the same terms as your orator. That the total sales made by individually owned retail stores affiliated with the said McKesson System in the State of Florida, as aforesaid, amount to a great many times the total sales of all of the 22 retail stores operated by your orator, Louis K. Liggett Company, in the State of Florida. That the individual- owned drug stores affiliated with the said McKesson System, as aforesaid, have all the advantages of quantity buying, and none of the disadvantages resulting from capital invested in quantity purchased, capital invested in warehouse, insurance, depreciation, etc. That such individually owned drug stores affiliated with said McKesson System can by motor vehicle procure quick deliveries on short orders, not only in the cities where said distributing warehouses are situated in Florida, but also for long distances around such [fol. 44] distributing points. That such individually owned stores affiliated with the McKesson System are able to keep their current stocks down to a small value because they can procure such goods in the State from the wholesale distributing point on 24 hours' notice; whereas it takes from three days to two weeks for Liggett's drug stores in the State of Florida to make requisitions and receive ship-

ments from the Company's central warehouse in New York City, thus necessitating the carrying in each of the retail units of your orator, Louis K. Liggett Company a comparatively larger stock than is carried by the individually owned drug store affiliated with the McKesson System, as aforesaid. That although the retail drug stores affiliated with the McKesson System, as aforesaid, enjoy all the alleged benefits of the chain or multiple store method of distribution, and avoid many of the burdens thereof, as aforesaid, nevertheless each of such individually owned drug stores affiliated with the McKesson System is required by sec. 8 of said Act to pay an arbitrary state license fee of only $5.00 each. That the said McKesson-Groover-Stewart Drug Company, although a wholesale chain drug company, operating at four points within the State of Florida, is not affected by said Act, and is required to pay only $1.50 per $1,000.00 on its stocks of merchandise, pursuant to sec. 926 Revised General Statutes of Florida, instead of $3.00 per $1,000.00 which your orator Winn & Lovett Grocery Company will be required to pay on its stocks of merchandise carried in its grocery warehouses, situated in Jacksonville and Sanford, Florida, as aforesaid. That the said McKesson & Robbins organization and affiliation of retail drug stores surrounding the four distributing points in Florida, as aforesaid, were in operation long before the 1931 sessions of the Florida Legislature, and the members [fol. 45] of the Legislature knew of such operations in the drug business, as well as in the other lines hereinafter mentioned. Nevertheless said Act deliberately undertakes to favor individually owned drug stores affiliated with such organizations, as aforesaid, and to impose oppressive, arbitrary and excessive burdens of taxation upon such merchants as your orator Louis K. Liggett Company simply and only because without subterfuge they own and operate a number of stores under one ownership and management.

X

Your orators would further show that the complainant Winn & Lovett Grocery Company operates each of its individual 38 grocery stores situated in various counties of the State of Florida as aforesaid, in the same manner that similar grocery stores are operated by owners of only one such

grocery store. That the manager of each such grocery store owned by this complainant buys a large part of his green vegetables, fruits, dairy products, poultry, eggs, etc. locally where such store is situated, from farmers and fruit growers, in the same way that single grocery store owners buy like merchandise. That the farmers and fruit growers, with the aid of State Market Bureau quotations, carried in Florida daily papers, always keep close watch on the market quotations, and, except for variation in quality, there is substantially no difference in the sale price to the local grocery stores, whether sold to a grocery store operated by a single-store owner, or to a grocery store owned by such operators as this complainant. That in all such cases the quotations put out daily by the Florida State Marketing Bureau is the basis of sale between the producer and the grocery store. That as to staple groceries, canned goods, butter, lard, meat—other than fresh meats—and the like, this complainant buys in comparatively large quantities and assembles [fol. 46] the same, by interstate shipments, at its principal warehouse located in the City of Jacksonville, and some at its branch warehouse located at Sanford, Florida, and from this points distributes those classes of merchandise to its individual retail stores on requisitions of such stores, as needed. That short distance deliveries are made by truck substantially in the same way as similar merchandise is delivered by the wholesale grocers operating in Jacksonville and other large cities of the State, to grocery stores owned and operated by single-store owners. That fresh meats, beef, pork, lamb and the like, are purchased and obtained by this complainant for its retail grocery stores in substantially the same way and from the same source as that utilized by grocery stores owned and operated by single-store owners.

That the aforesaid Act of 1931 was not designed as a police measure as applied to the grocery business conducted by this complainant in the manner aforesaid. That the operation by this complainant of many stores, as aforesaid, situated in different parts of the State of Florida, does not increase the fire hazards, or endanger the health or morals of the community, or require increased or additional police protection, any more than other stores individually owned and operated in said respective communities. That this complainant owns and operates one store in the City of Talla-

hassee, Florida, under the name of "Lovett's Groceteria," situated at 304 South Monroe Street. That there are a number of other grocery stores in the City of Tallahassee, Florida, none owned and operated by other so-called chain stores, and others individually owned, where the same character of merchandise is sold and substantially the same methods of business carried on, and yet, on account of the circumstance that this complainant owns many stores in [fol. 47] other parts of the State the tax imposed by said Act upon said single store owned by this complainant in the City of Tallahassee, as aforesaid, is many times the burden which is imposed upon the single grocery store owner, selling the same or a greater amount of merchandise, next door, or in the same block where this complainant's said business is carried on.

XI

Your orators would further show that there is very keen competition in the grocery business in the State of Florida, although many chain or multiple grocery store owners operate in the State. That there are in the City of Jacksonville, Florida, according to the classified telephone directory of August, 1931, to-wit, 388 retail grocery stores, and sixteen wholesale grocery stores. That a copy of said classified list showing the names and addresses of said 388 retail grocery stores is hereto attached, marked exhibit #3, and made a part hereof. That your orator Winn & Lovett Grocery Company owns and operates 4 Blitch's Red Front Stores, 4 Clarence Saunders Stores, 14 Piggly Wiggly Stores and 1 "Lovett's Groceteria" making 23 in all. That, as appears by said directory, there are in the City of Jacksonville, Florida 37 Whiddon Stores, owned by George C. Blume, as aforesaid. That Whiddon stores are a local system of chain stores operated only in Duval County. That the Great Atlantic & Pacific Tea Company operates 16 retail grocery stores in the City of Jacksonville, Florida. That as appears by said directory, Exhibit 3, there are numerous other small chains of grocery stores operating in the City of Jacksonville, most of them being local, and operating only within said City.

[fol. 48] Your orators would further show that the keenest of competition and the class of advertising put out, not only by chain grocery stores, but also by individually owned

grocery stores and by cooperative groups of individually owned grocery stores, are shown by the grocery store advertisements appearing in the Florida Times Union, published at Jacksonville, Florida, on September 12, 1931, pages 10 to 15, inclusive, which pages of said issue of said paper, so far as they concern grocery store advertisements, are hereto attached, marked exhibit #4, and made a part hereof. That the advertisement of your orator Winn & Lovett Grocery Company for its "Lovett's Groceteria" store appears page 10 of said exhibit. That the advertisement for its Piggly Wiggly stores, Clarence Saunders stores and Blitch Red Front Stores, appear page 11 of said issue of said paper. That the advertisement for the Great Atlantic & Pacific Tea Company's stores appears page 13 of the issue of said paper. That the advertisement of Whiddon's Stores appears page 16 of said issue of said paper. That the advertisement for the Daylight Markets appears page 14 of said issue of said paper, which markets consist of a local chain in Duval County, Florida, of three grocery stores. That the full page advertisement of "Better Food Stores" appears page 12 of said issue of said paper. That the 42 grocery retail stores listed on the margin of said advertisement for "Better Food Stores" are a group of individually owned grocery stores affiliated with Lewis-Chitty Consolidated Grocery Company, a wholesale grocer doing a large wholesale business in the City of Jacksonville, with branch wholesale houses at Orlando, Florida, Tampa, Florida, Cocoa, Florida, Miami, Florida, and other points in the State. That as appears by said advertisement, page 12 of said exhibit 4, the slogan of the "Better Food Stores" is—

[fol. 49] "Individually Owned, Operated Collectively—Your Neighborhood Grocery Stores."

That the name "Better Food Stores" is a trade name belonging to a Corporation whose corporate name is "Better Food Stores, Inc." organized under the laws of the State of Florida, charter of which was granted June 8, 1921. That the organizers of said "Better Food Stores, Inc." were A. B. Chitty, C. B. McDowell, John W. Martin and L. W. Jennings, all of Jacksonville, Florida. That the said A. B. Chitty is the President and controlling stockholder of the Lewis-Chitty Consolidated Grocery Company, and the said John W. Martin is a former Governor of the State of Flor-

ida. That the said Act known as Committee Substitute for House Bill No. 8-X as passed, is substantially the same bill which was introduced in the Senate during the regular session of the 1931 Legislature, so that the formation of such cooperative groups as represented by said "Better Food Stores" has been encouraged and fostered by the discriminations created by said Act. That on June 18, 1931, another grocery corporation was organized under the name of "Florida Food Stores, Inc." by certain individuals in the grocery business at Daytona Beach, Florida, and under that name a number of independent or individually owned grocery stores have been affiliated for cooperative purposes, in the same way as the aforesaid group operating under the name of "Better Food Stores." And in like manner many other cooperative groups of independently owned grocery stores have been formed under trade names, or otherwise, since the passage of said Act, being assured thereby that they could so operate without being subjected to the excessive and discriminatory graduated license fees provided for by said Act. That although the said "Better Food Stores" group was organized about the time said Act was [fol. 50] passed or introduced into the Legislature, the same has had a very rapid growth, as shown by said advertisement, there being on September 12, 1931, forty-two (42) individually owned grocery stores in said Jacksonville or Duval County group. That other similar groups have been formed at Orlando and vicinity, Tampa and vicinity, Cocoa and vicinity, Miami and vicinity, where the said Lewis-Chitty Consolidated Grocery Company has Branches of its wholesale grocery business. That your orators have not been able to obtain a copy of the contract existing between the individually owned grocery stores and said corporation known as "Better Food Stores, Inc." or between the said individually owned grocery stores and the Lewis-Chitty Consolidated Grocery Company, but your orators are advised and believe, and so aver, that the contract whereby individually owned grocery stores have been affiliated under that trade name is similar to a contract which began to be used three or four years ago in Jacksonville, Florida, and vicinity, by another wholesale grocery company, under which individually owned grocery stores were affiliated under the trade name of "Clover Farm Stores." That in and by said contract the owner of the individual store agreed, among other

things, to buy a share of stock in The Clover Farms Stores Company, similar to Better Food Stores, Inc. and to use such painting and such signs as would indicate that the individual store belonged to said group. That during the life of said contract the individual store owner would, as far as possible, purchase his requirements in dry groceries from a particular wholesale grocerman, in this case the Lewis-Chitty Consolidated Grocery Company, or if not, from the authorized packers, manufacturers or wholesalers designated by the Clover Farms Sales Company, in this case The Better Food Stores, Inc.; also that the individual store owner agreed to pay so much per week for the benefits de- [fol. 51] rived under the contract. In return for all of which the individual retail store owner was to receive the advantages of cooperative purchasing and advertising privileges, modern merchandising methods, advice and instructions in modern store stock arrangement, etc., and the Company, that is to say the intermediary between the retail store owner and the wholesale Company—in this instance the Better Food Stores, Inc.—agreed to suggest plans and layout of shelving and fixtures according to modern merchandising standards, and to give the individual store owner such advice as would enable him to conform to the general plan for the operation of all such group of stores. Also that the Company should at its own expense furnish a representative to advise with the individual store owner as to merchandising methods, acting in the capacity of supervisor, and to give instructions and to furnish certain defined services; all of which are more particularly shown by a copy of said Clover Farm Stores form of contract hereto attached, marked exhibit #5, and made a part hereof. That your orators are further advised and believe and so allege that the contract entered into between said individually owned store owners as aforesaid, provided that said individual store owners would purchase, carry and sell the particular brands of package goods carried by the Lewis-Chitty Consolidated Company, particularly "Over Sea" Brands carried by said Company, and appearing in said advertisement, page 12 of said exhibit #4. That by such affiliations and cooperative organizations single grocery store owners have adopted the best features of chain store merchandising and have secured substantially all the benefits derived therefrom, while at the same time they have avoided the burdens

of capital investment, insurance, etc. incident to the carrying of a large stock in a central warehouse, such as maintained by your orator Winn & Lovett Grocery Company, in [fol. 52] Jacksonville, Florida and Sanford, Florida. That your orator Winn & Lovett Grocery Company also finds it necessary to maintain a force of employe-s in a fleet of trucks to deliver merchandise from its warehouse in Jacksonville, Florida, to its retail units, operated in Duval County, Florida, and outlying small towns; whereas the individually owned stores affiliated as "Better Food Stores," as aforesaid, have no such expense, and can obtain daily deliveries by motor trucks as needed, from the Lewis-Chitty Consolidated Grocery Company, with which they are under contract, as aforesaid.

Your orators would further show that cooperative groups such as the aforesaid "Better Food Stores" are not local merely to Jacksonville, Florida, and other parts of Florida, as aforesaid, but that method of cooperative merchandising prevails generally throughout the United States. That the largest organization of independently owned grocery stores in the United States is known as the Independent Grocers' Alliance, which was formed 5 years ago in Poughkeepsie, New York. That said organization of independently owned grocery stores now embraces thirty-eight states, including the Southern States, and has one hundred and thirty (130) jobbing or supply depot centers. That in the course of five years said organization of independently owned grocers has acquired a buying power of $500,000,000.00 per year, serving approximately 11,226,000 families, through more than 14,000 retail grocery stores. That the scheme of organization and affiliation of the Independent Grocers' Alliance and the owners of individual grocery stores is very similar to the relation which exists between the members of the Better Food Stores aforesaid, and the Lewis-Chitty Consolidated [fol. 53] Grocery Company, or its intermediary Better Food Stores, Inc. That the retail grocer affiliated with the Independent Grocers' Alliance pays $3.50 per week to the Independent Grocers' Alliance jobber, who in turn furnished the retailer with groceries at reduced prices, and also newspaper advertising, copy mats, display cards, price posters, and various up-to-the minute merchandising helps. That the newspaper advertising is placed by the I. G. A.

wholesaler in his local paper, but the copy and layouts are furnished by the I. G. A. advertising counsel. That the I. G. A. advertising appears in 283 dailies and 454 weeklies, and calls for an annual expenditure of $757,000, in addition to which there is an annual expenditure of $250,000.00 for national magazine and radio advertising. That the selling power of the I. G. A. Organization is very great, as illustrated by the following figures taken from a recent publication:

"During the past year, within a period of one or two weeks I. G. A. stores have sold 65 carloads of matches, 500 carloads of salt, 100 carloads of toilet paper, 120 carloads of sliced peaches, 150 carloads of macaroni, 4,600,000 pounds of Christmas candy."

That at the present time there are more than 500 I. G. A. Brand items sold by members of the I. G. A. stores. That there are in Florida affiliated with the Independent Grocers' Alliance 83 retail grocery stores in Tampa, St. Petersburg, Clearwater, and on the West Coast of the Peninsula, who get their supplies from Perkins & Sharpe, whose warehouse is situated in Tampa, Florida, and who are the I. G. A. jobbers in that territory. That in the Tampa Morning Tribune of Oct. 24, 1931, there appeared an advertisement by the Tampa Grocery Company, of Tampa, Fla. which is one of the I. G. A. stores in that vicinity. That a copy of said advertisement is hereto attached, marked exhibit #6, and made a part hereof, from which it appears that each of said stores carries an insignia of a shield with the letters [fol. 54] "I. G. A." appearing thereon; and said stores also carry the slogan "Home Owned." Also that the goods advertised are for the most part I. G. A. Brands. That on October 16, 1931, a similar advertisement appeared in the Clearwater Sun by other I. G. A. stores, a copy of which said advertisement is hereto attached, marked exhibit #7, and made a part hereof. That there are many other voluntary chains or cooperative groups in the United States, not only in the grocery business, but in other lines, and the independent store owners so operating have adopted the best features of modern merchandising promulgated by chain or multiple store operators. Some of the methods in which regular chain stores took the lead, and which were then

adopted by single store merchants, voluntary chains or co-operative groups, are as follows:

"Buying.—Regular chains first bargained to reduce the margin of the wholesaler to a minimum and then established their own wholesale service.

"Voluntary chains first sought to reduce the wholesaler's margin to the lowest possible basis by group or concentrated buying. They are now developing a form of voluntary association between the wholesale supply center and the retail outlets which is planned to avoid salesmanship, credits and other executive functions so that the wholesale house will do the work of central buying, warehousing and delivering at a cost closely approximating that of the same functions in the regular chains.

"Management of Stores.—Regular chains improved their operations by more attractive stores, better arrangement of stocks, dropping of duplicate lines, and the introduction of careful business methods to avoid as much as possible of the waste in distribution.

Voluntary chains are altering their stores to some more or less uniform appearance; are adopting certain standards of cleanliness and arrangement; and are educating their members to the overhead burden which must be borne if their is needless duplicating of lines.

"Central supervision.—Regular chains early developed standardized operations with systematic supervision.

"Voluntary chains started with group meetings to secure community of action and are now progressing into the use of newspaper copy featuring prices; now they are continuing to offer prices which will interest the shoppers but are mak- [fol. 55] ing increased use of institutional copy to individualize the service of their stores and certain types of commodities offered only by themselves.

"Voluntary chains first offered local specials to match the chain store across the street; then organized into larger groups because a number of stores had to participate if newspaper copy was to be used; and now are progressing into more systematic use of "specials and greater emphasis upon the importance of individual ownership and the lines which the independents feature.

"Special Deals with Manufacturers.—Regular chains naturally asked the manufacturer to make them an allowance in lieu of the money he was using to place his brands in retail stores, and suggested that a portion of his advertising appropriation be spent in their space because of the direct contact established with the consumers.

"Voluntary chains are putting forth much effort to impress their numbers with the importance of implicit acceptance of the group program so as to offer the manufacturer the same store replacement and selling service that he could get from the regular chains. They have been aided in this difficult problem in organization by securing appropriations for their newspaper advertising and window spaces along the same lines as the appropriations secured by the regular chains.

"Private Labels—Regular chains have developed private labels for the purpose of giving individuality to their merchandise and to provide lines on which they were not exposed to direct price competition.

"Voluntary chains are developing private labels to help promote group loyalty, as well as for the same merchandising reasons that have prompted the regular chains."

That although members of such voluntary chains or cooperative groups are doing business in the same way, and doing the same kind of business, and have adopted the same features of merchandising first promulgated by chain store operators, the said Act of which your orators complain undertakes to impose excessive burdens of State license taxes provided for by the brackets 1 to 11, inclusive, of sec. 5 of said Act, upon your orators and other chain store operators similarly situated, while not placing the same corresponding burdens upon members of said volun-[fol. 56] tary chains or cooperative groups. That the Legislature knew that the Independent Grocers' Alliance was operating extensively in Florida before said Act was passed, and the Legislature also knew that your orators were already operating their several drug, grocery and shoe stores in Florida, and had been for some years prior to the passage of said Act. That the said Act in view of the comparisons aforesaid, and many others which your orators can and will show to the Court, is a deliberate attempt to destroy the businesses of your orators, and of

other chain store operators similarly situated, by excessive taxation, and to compel them to disintegrate their several businesses and confine their operations to one store in one locality only; and your orators aver that the effect and operation of said Act violates the "Equal rights" clause and the "Equal protection" clause of sections 1, 4 and 12 of the Florida Declaration of Rights, and the Fourteenth Amendment to the Federal Constitution.

XII

Your orators would further show that your orator Paxson's Inc. was organized 1929 under the laws of the State of Florida, with a capital stock of $40,000.00, consisting of 400 shares of the par value of $100.00 each, owned as follows:

R. H. Paxson, President, residing at Jacksonville, Florida	201 shares
S. Spalding Smith, Vice President, residing at Gainesville, Florida	99 shares
C. B. Decker, Secretary-Treasurer, residing at Jacksonville, Florida	20 shares.

[fol. 57] That the officers and stockholders of this complainant, as aforesaid, are all long time residents and citizens of the State of Florida. That this complainant, President, was formerly employed for many years in a wholesale shoe store in Jacksonville, Florida, and while so employed, conceived the idea of owning and operating a number of comparatively small retail shoe stores distributed in different towns, to handle popular priced shoes, which would meet a popular demand of the trade. That the eight retail shoe stores owned by this complaina-t, one in Georgia and seven in Florida, as aforesaid, are the outgrowth of the plan so formulated. That this complainant conducts its shoe business in its several retail shoe stores situated as aforesaid, in the same manner as other shoe stores are conducted in said several localities, attempting, however, to give the public a better service than is given by other shoe merchants doing the same sort of business, and attempting to give the customers of this complainant better values for their money, all of which efforts on the part of this complainant are mere matters of competitive merchandising, equally

available to all other shoe merchants, whether owning only one store or many stores.

Your orators further show that your orator, Paxson's, Inc. carries a comparatively small stock of goods in each of its seven Florida stores, and a comparatively small stock of goods in its one Georgia Store. That your complainant, Paxson's, Inc. does not own or maintain any warehouse, central or otherwise. On the contrary, this complainant buys its goods direct from the factories, situated in different parts [fol. 58] of the United States, from which factories shipments are made direct to each individual shoe store owned by this complainant, as aforesaid. That this complainant buys shoes on substantially the same terms as shoes are bought by other shoe merchants doing business in different parts of the State, whether such merchants operate single stores or many stores. That this complainant does not do extensive advertising in connection with its said shoe business due to the fact that its said shoe stores are widely scattered, and advertising in one town where a store is located would be of little value in another town which has its own local papers. That this complainant's shoe business in each town where a store or stores are operated has been built up by the energy and effort of this complainant's officers and by the efforts of complainant's store managers, some of whom own stock in the Company, as aforesaid.

Your orators would further show that the complainant, Paxson's, Inc. has many competitors doing a similar shoe business in the Cities of Jacksonville, Florida, Gainesville, Florida, Daytona Beach, Florida, and West Palm Beach, Florida, where Paxson's, Inc. operate stores as aforesaid. That in Jacksonville, Florida, there are many shoe stores which are singly owned and operated. That in said City there are shoe businesses operated in more than one location, among which is J. J. Jordan, who owns and operates three shoe stores in the City of Jacksonville, but in no other County. And your Orator further shows that the Department Store, known as Cohens, operated in the City of Jacksonville, Florida, as aforesaid, has two or three shoe departments for different grades of shoes. That the value of the combined stocks of shoes in the several departments of the said Cohen's Department Store is greater in value than the combined value of all of the stocks of this com-

[fol. 59] plainant's seven Florida shoe stores, situated as aforesaid. Nevertheless, said department stores, covering a whole City block in the City of Jacksonville, and embracing under one roof many departments of merchandise, including several shoe departments, as aforesaid, will be assessed with an arbitrary state license fee of only $5.00; whereas this complainant will be assessed with an arbitrary state license fee in the sum of $13.60 on each of its said shoe stores, in addition to which this complainant will be required to pay $3.00 per $1,000.00 license tax on the value of its merchandise carried in its several stores situated as aforesaid, plus a county license tax of 25% of the State tax, plus a municipal license tax of another 25% of the State tax. That there are several other singly owned shoe stores in the City of Jacksonville who each carry a larger stock, and who each do a larger retail business than this complainant does in all of its three shoe stores located in said City. Nevertheless, said large single shoe stores are chargeable with annual state license fees of only $5.00 each, as compared with an annual state license fee chargeable against each of this complaint's shoe stores of $13.60. That this complainant's said shoe business through said seven Florida retail stores has been in operation for several years last past. That many other shoe businesses are now, and were prior to the passage of said Chap. 15624, operated in a similar manner. That the drug business of the Louis K. Liggett Company and the grocery business of the Winn & Lovett Grocery Company, were also operated in the same manner as now long before the passage of said Act.

[fol. 60] XIV

Your orators would further show that whatever success has been attained by your orators and other chain or multiple store merchants, has not been due to the adoption of any operating methods peculiar to themselves, or other chain store merchants, unavailable to other retailing instrumentalities. That chain or multiple store operators have simply adopted their distributive policies and methods to satisfy the requirements of the changed economic conditions, some of which are set forth in sec. VI of this Bill, and have led the way towards the elimination of waste and

duplication in retail distribution, with resultant benefits to the consumers of better merchandise at lower prices. That chain or multiple stores have many operating methods in common, but all of them are open to adoption by singly owned stores. That as regards quantity buying, buying for cash, skill in buying, warehousing, sales policy, management or methods—all such practices and improvements in retail merchandising are open to all merchants, and have been adopted by many progressive independents, either as individuals, or by cooperative groups such as McKesson & Robbins Drug Stores, Better Food Stores, and I. G. A. Grocery Stores, as hereinbefore set forth.

Your orators would further show that in March, 1929, the State of Indiana passed an anti-chain store act, sections 1, 3, 7 and 9 of which, save the officers named to administer the law, were copied almost word for word in the corresponding sections of the Florida Act, Chap. 15624. That the Indiana Statute in full appears in the foot notes of the decision of

> [fol. 61] Jackson v. State Board of Tax Commissioners, 38 Fed. (2) pages 653 to 655.

That the brackets contained in sec. 5 of said Indiana Statute were copied almost word for word in said Committee Substitute for House Bill No. 8-X, as appears from the report of the Senate Committee on Finance and Taxation, contained in the Senate Journal of June 23, 1931, pages 2 and 3, save that the brackets in said Bill as introduced named a maximum of $50.00 for each additional store, instead of $25.00, as in the Indiana Statute. But, as previously pointed out in sec. 4 of this Bill, the Senate amended said House Bill by substituting an entirely different set of brackets, as now appears in sec. 5 of said Act, and said Senate amendments were afterwards adopted in the House, but not by a two-thirds vote. That the sundry matters complained of in sec. 7 of this Bill are each and every entirely different from the provisions of said Indiana Statute. That said Indiana Statute by a five to four decision, was sustained by the Supreme Court of the United States, and said decision, rendered May 18, 1931, is reported as

> State Board of Tax Commissioners v. Jackson, 283 U. S. 527, 75 L. ed. (Adv.) 670, 51 S. Ct. 540.

That the majority opinion delivered by Mr. Justice Roberts recites that the appellants introduced evidence to prove that there are many points of difference between chain stores and independently owned units, following which the supposed differences are stated in the majority opinion. That the record in said cause, and the dissenting opinion of Mr. Justice Sutherland show that said recital of the majority opinion was predicated upon the testimony of one William A. Rawls, Dean of the School of Commerce and Finance, University of Indiana, who, by his testimony [fol. 62] claimed to be familiar with merchandising conditions in that State; whereas Mr. Justice Sutherland points out in his dissenting opinion that said witness on cross-examination himself admitted that no such differences existed. That the record in said cause also contains the testimony of other nationally known experts, among them P. H. Nystrom, Professor of Marketing, in Columbia University, and the author of sundry books on the subject of retail merchandising, chain stores, and the like. That the testimony as given by the said Nystrom also contradicts the testimony in chief given by said Rawls. That all the testimony taken in said cause was given early in January, 1930, as applied to conditions then existing in the State of Indiana. That regardless of what may or may not have been the conditions of merchandising and the then methods used by chain stores operators in the State of Indiana, such conditions and such differences as catalogued by the majority opinion of the Supreme Court do not prevail in Florida. That as to each of the alleged differences mentioned by the majority opinion in the Jackson case, the following is the situation now prevailing in Florida:

(a) As to—

"Quantity buying which involves the operation of the mass process to distribution comparable to the mass method used in production."

That in Florida the amount or quantity of merchandise which can be procured by any merchant is in no wise dependent upon the number of stores owned by such merchant, but upon the size of the business conducted and the volume of the business done by such merchant, whether such merchant owns one or more stores, plus the capital or

credit standing of such merchant. That many merchants [fol. 63] owning one store in Florida can and do buy the merchandise sold by them in the same or larger quantities than so-called chain stores, or merchants owning more than one store; as, for example, the buying of merchandise by Cohen Brothers, the large department store in Jacksonville, hereinbefore mentioned. That quantity buying is merely a cost factor in the purchase and distribution of merchandise, and many merchants in Florida who own only one store, can and do secure their merchandise at equally as favorable prices as so-called chain stores, or merchants owning more than one store. That in the drug business, and in the grocery business, and in many other businesses, the articles sold by the merchants in Florida are packaged and branded goods, nationally advertised, and sold under the trademarks of the manufacturers, and the quantities necessary to be purchased in order to secure the best quantity discounts are small or moderate, so that the best quantity discounts can be obtained by business of small or moderate volume. That the shoe business of your orator, Paxson's Inc. and the shoe businesses conducted by his numerous competitors, as aforesaid, all illustrate the fact that there is no advantage in quantity buying available to chain stores which is not likewise available to all merchants doing business in this State, and this fact is also further illustrated by the operations of cooperative groups such as McKesson Drug Stores. Better Food Stores, and I. G. A. stores, whose operations are explained as aforesaid.

(b) As to—

"Mass Distribution."

Your orators would further show that there is no such [fol. 64] thing as mass distribution in the same sense as mass production. That in the case of mass production, the same is accomplished by machines made for that purpose, operated in factories, with one set of expenses for rent, light and other overhead factors. That the articles so turned out must afterwards be individually distributed to individual customers, through retail outlets, each having its own set of overhead expenses, and in the case of a merchant having 58 stores, there are overhead expenses of 58 store organizations, 58 sets of sales people, 58 sets of rents,

58 insurance policies, and 116 assessments of ad valorem taxes, and the articles made by the machines in mass must be sent to the individual stores and then distributed, unit by unit, to individual customers. That the term "mass distribution" is paradoxical, and merchants have not found, and do not have any method of distributing merchandise in mass. That if by "mass distribution" it meant large aggregate sales of chain stores, then the many large department stores doing business in Florida have a greater "mass distribution" than many ch-in stores doing business in this state, and in like manner, the aggregate retail sales of such cooperative groups and Better Food Stores and I. G. A. Stores are very much greater than the aggregate sales of many chain stores operating in the State of Florida.

(c) As to—

"buying for cash and obtaining advantage of a cash discount."

That in Florida buying for cash and obtaining the advantage of a cash discount has no relation whatever to the number of stores owned, but is a matter of individual judgment, and of buying terms and of cash capital. That many individual merchants in Florida owning one store buy for cash and obtain the benefit discounts, whereas there are so-[fol. 65] called chain stores, and merchants who own more than one store, who do not pay cash, and who do not take advantage of the cash discounts. This is particularly true of chain furniture stores, chain ready-to-wear stores, and chain automobile accessories stores. That the chain furniture business, buying on credit and selling on credit, is illustrated by the affidavit of C. D. Wood, filed in this cause on the 19th day of October, 1931.

(d) As to—

"Skill in buying so as not to overbuy and at the same time keep the store stocked with merchandise, suitable in style, quality and quantity for the neighborhood customers who patronize them."

That in Florida there are many individual merchants who are extremely shrewd and skillful buyers, and there are

merchants owning more than one store who are not skillful buyers. That the ability or necessity of employing a special buyer is dependent on the size of the business done and not on the number of stores owned. That skillfulness in buying is a personal attribute of the merchant owning the store, and has no relation to the matter of whether he owns one store or more than one store. That on the question of keeping stores stocked with merchandise suitable for the neighborhood customers the one store merchant has the same or better opportunity than the chain store merchant, who must operate his business through the employment of store managers. That the individual merchant owning a single store has a great advantage in the matter of good will and in the matter of contact with his trade.

(e) As to—

"Warehousing of goods and distributing from a single warehouse to numerous stores."

[fol. 66] That in Florida there is no such advantage. That in Florida warehousing is done merely as a matter of convenience in order to supply the stores owned with merchandise, and the maintenance of a warehouse, with the incident rent, taxes, insurance, etc. is an expense, and not an advantage. That many merchants who own more than one store in Florida, such as the complainant, Paxson's, Inc., do not own or operate any warehouse whatsoever, and do not distribute from a single warehouse to numerous stores. That whether the individual merchant, be he a single store merchant or a chain store merchant, owns and maintains a warehouse depends upon his individual needs and the individual judgment of the particular merchant, but whatever benefit or burden is incident to the maintenance of a warehouse is open to all alike.

(f) As to—

"Abundant supply of capital whereby advantage may be taken of opportunity for establishment of new units."

That in Florida there are many merchants who own only one store who have abundant supply of capital whereby advantage can be taken in enlarging the business of such merchants; that there are many merchants owning more

than one store who do not have such supply of capital. That during the period from 1922 to 1929 capital was easily available to all merchants of good credit standing, whether owning one store or more than one store. That at the present time all merchants are finding great difficulty in securing capital to enlarge their businesses, or to even keep their businesses intact, and this applies not only to single store merchants, but also to chain store merchants. That the amount of capital which a merchant doing business in [fol. 67] Florida can command depends upon his or its personal standing, ability, past and present prosperity, and other factors which are not in any wise related to the question of whether he owns one or more than one store. That in recent months there have been numerous failures of chain stores operators in the State of Florida, as well as numerous failures of owners of single stores; that among the chain store operators so failing in Florida, are Ethre Drug Stores, The All American Stores, and the Southern Grocery Stores.

(g) As to—

"A pricing and sales policy different from that of the individual store, involving slightly lower prices."

That in Florida many merchants owning more than one store do not have any pricing or sales policy different from that of the individual store, which is again illustrated by the manner in which your orator, Paxson's Inc. conducts its shoe business, as aforesaid. That in Florida merchants owning individual stores, as well as merchants owning more than one store, endeavor to do as large a volume of business as possible on as low a margin of profit as is consistent with covering the overhead expenses and earning a return on the invested capital. That in Florida some merchants sell for cash and some for credit; some deliver and some do not; and in Florida these factors are not dependent upon whether one or more than one store is owned by the merchant. That some merchants in exclusive or high priced rent sections, and catering to a high priced trade, are able to get better prices than merchants located in other sections, and doing business with a different class of people —but this has nothing to do with whether one store is [fol. 68] owned or many stores are owned. That the price

and sales policy of any store is a matter for the individual judgment of the owner, as to how to secure a return on the capital and effort invested. That the sales policies are illustrated in this cause by the advertisements aforesaid on the part of the Atlantic & Pacific Tea Company stores; on the part of Winn & Lovett Grocery Company for its stores; on the part of Whiddon's stores; on the part of the Better Food Stores; on the part of the I. G. A. stores, all of whom are free to utilize, and are attempting to utilize those features which in their several judgments will be most effective to attract trade.

(h) As to—

"A greater turn over and constant analysis of the turn over to ascertain relative profits on varying items."

That in Florida turnover is a mere matter of volume of business done, and is related to the class of merchandise sold, and not to the matter of whether one or more than one store is owned; that in the jewelry business and in the furniture business, and hardware business, and other businesses, the turnover is comparatively slow, while in the restaurant business and confectionery business the turn over is rapid. That many individual merchants have as rapid turnover as merchants owning more than one store, and there is nothing inherent in the ownership of two or more stores which gives the merchant a greater turnover than that of a merchant owning only one store. That constant analysis of the turn-over has no relation to the question of whether one store or more than one store is owned, but is a matter of individual energy, temperament and [fol. 69] attention to details. That through such cooperative groups as the McKesson Drug Stores, Better Food Stores and I. G. A. Stores, individual merchants who so affiliated are able to obtain even greater or more rapid turnover than can be had in the retail units of chain store merchants who, as for instance your orator, Louis K. Liggett Company, are compelled to make shipments from a distant warehouse on requisitions receive-, whereas the numbers of such cooperative groups can get deliveries by truck from local distributing warehouses on short notice.

(i) That as to—

"Unified and therefore cheaper and better advertising for the entire chain in a given locality."

In Florida many so-called chain store merchants do not advertise at all in newspapers, and others advertise infrequently as for instance, your orator Paxson's, Inc. and as for further example, the Independent Furniture Company, whose business is explained in the affidavit of G. D. Wood which was filed in this cause on October 19, 1931. That many so-called chain store merchants have only one store in this state and for that reason are on the same footing as regards advertising as the individual single store merchant. That Montgomery Ward & Company, formerly and still a large mail-order house, and recently operating several hundred stores in many states, owns only one store in Florida. That Sears, Roebuck & Company, formerly and still another great mail order house, also now operates several hundred stores in different parts of the United States, with several in Florida, one at Jacksonville, one at Tampa, one at Miami; but being so widely distributed, advertisement in the newspapers of one of such stores is of no practical benefit to the stores situated in [fol. 70] other cities. That whatever advantages there may be in unified advertising is open to all, and has been adopted and is being utilized by such cooperative groups as Better Food Stores and I. G. A. Stores, as more particularly shown by the advertisements hereinabove referred to, or attached to this bill as exhibits.

(j) As to—

"Standard forms of display for the promotion of sales."

Many merchants in Florida owning more than one store do not have any standard forms of display, but each store manager uses such displays as the individual store manager thinks will attract customers to his locality. That many merchants owning one store only use the same methods and same forms of display as merchants owning more than one store. That forms of display are shown in trade magazines and furnished by manufacturers, and are available to cooperative groups such as Independent Grocers' Alliance, Pure Food Stores, Inc. and others. That chain store merchants in this behalf, as in others, have led the way,

with the result that there has been a great imp*or*vement not only in the display of goods, but in the sanitation and cleanliness with which all first class retail stores are now operated.

(k) As to—

"Superior Management and Method."

That in Florida while there are merchants owning more than one store who may have "superior management and method", there are also merchants owning only one store who have "superior management and method," and there are merchants owning more than one store who have inferior management and method the same as there are mer- [fol. 71] chants owning one store who have inferior management and methods. That there is nothing inherent in the ownership of more than one store which produces "superior management or method." That in Florida merchants owning more than one store are subject to exactly the same economic conditions, problems and vicissitudes as merchants owning only one store. That chain store merchants have no monopoly on management or method, and no exclusive privilege in either behalf, save as acquired in some instances from corporations who have secured patent rights for particular types of store arrangement. That the Piggly Wiggly Corporation has patented the characteristic self service type of store uniformly found in Piggly Wiggly stores, and transfers and assigns to purchasers exclusive rights to use that sort of store arrangement in particular territory. That your orator, Winn & Lovett Grocery Company, secured such territorial rights in Duval County, Florida, and certain other parts of the State. That a certain merchant of Tallahassee, Florida, in like manner acquired the territorial rights in that locality, and now operates two Piggly Wiggly stores in Tallahassee. That the Piggly Wiggly corporation, in connection with the assignment of such rights, whether to a chain store, or the *the* owner of a single store, also supplies certain supervisory benefits and advices as to modern and up-to-date methods of merchandising. That in like manner the Claurence Saunders Inc. grant territori*la* rights to the particular design of store arrangement patented by that corporation and your orator Winn & Lovett Grocery

Company has obtained certain territorial rights in that behalf. That any other merchant, though owning a single store, has the same right to obtain such territorial rights from either said corporations, where not already assigned [fol. 72] and disposed of.

(l) As to—

"Concentration of management in the special line of goods handled by the chains."

Many so-called chain stores in Florida are not specialty shops, and do not handle one special line of goods, from which it follows that they have no advantage over single store merchants due to concentration of management in a special line of goods. That the J. C. Penney Company, a so-called chain, operates a department store; that Montgomery, Ward & Company, Sears Roebuck & Company and W. T. Grant also operate department stores, or stores of diversified merchandise. That Woolworth Company, Kress Company and McCrory Company operate 5 and 10 Cent stores, carrying innumerable classes of articles, and so do many other so-called chains. That the Florida stores of your orator Louis K. Liggett Company carries more than 11,000 different items, and your orator's said stores compete with such specialty shops as cigar stores, confectionery stores, perfume shops, and others, some of which are owned by merchants having only one store and some by merchants having more than one store. That merchants owning only one store have the same opportunity for concentrating management on the special line of goods handled by each such merchant as does the merchant owning two or more stores.

(m) As to—

"special Accounting Methods."

There are no methods of accounting peculiar to ownership of more than one store which are not available to owners of more than one store. That a store owner, whether owning one or several, may use such accounting methods as he sees fit. That the methods adopted or best [fol. 73] used are not dependent upon the number of stores owned, but rather, on the size of the business, the kind of

merchandise sold, whether on cash, credit or installment, and other varying factors, all of which are present whether the merchant is efficient or inefficient in conducting his business.

(n) As to—

"Standardization of store management, sales policies and goods sold."

Many Florida merchants owning more than one store do not standardize store management, sales policies or goods sold, while many merchants owning only one store do adopt such standardization. There is in fact such similarity in methods used and goods sold by merchants in Florida, such as drug merchants and grocery merchants. The store of one merchant cannot be distinguished inside or outside from the stores of other merchants, save by some peculiar painting or display of signs. That in any event, chain or multiple store operators have obtained no advantage from standarization which is not equally available to all store operators, and whatever improvements in that behalf have been made by chain stores in merchandising methods have been and are being adopted by other merchants, particularly such cooperative groups as McKesson Drug Stores, Better Food Stores and I. G. A. Stores, whose operations are illustrated by the advertisements above referred to.

(o) As to—

"Differences or advantages" shown by the "number of chains established or their growth."

That during the period immediately following the World [fol. 74] War the United States became a creditor nation, and large capital was available for business expansion; that a large number of stores were opened, not only by single store merchants, but also by multiple store merchants. That the rate of growth in number of singly owned stores was substantially the same as that of so-called chain stores; that all classes of stores increased in volume and prosperity during the period from 1922 to 1927. That in Florida the number of singly owned stores greatly exceeds, and has always greatly exceeded the number of ch-in or multiple stores. That the so-called chain store operators

which have been most successful have operated over long periods of time, dating back 25 to 72 years, and the strength and efficiency which such chains have acquired is the result of the accumulated experience of many years merchandising. That of the chain stores started since the World War there have been many failures, not only in Florida, but elsewhere, and the same is true of singly owned stores. That there is nothing inherent in the ownership of more than one store which saves it from lack of efficiency and capital backing any more than is in the ownership and operation of a single store.

That when all is said and done by way of comparing the businesses of chain or multiple store merchants with the businesses of merchants owning single stores only, there are no essential differences dependent upon whether one or more than one store is owned and operated. That the arbitrary, oppressive and unreasonable classifications attempted by said Chap. 15624, predicated upon the number of stores owned, are wholly without justification, and cannot be sustained consistent with the "due process" clause [fol. 75] and "equal protection of the laws" clause of sections 1, 4 and 12 of the Florida Declaration of Rights and the Fourteenth Amendment to the Federal Constitution.

[fol. 76] XV

Your orators would further show that the defendant Hon. Ernest Amos, under the advice of the Hon. Cary D. Landis, Attorney General of the State of Florida, is undertaking to administer said Chapter 15624 in a manner so as to create sundry exemptions and exceptions as to merchants to whom it shall be applied, which exemptions and exceptions, as your orators are advised and believed and so aver, are wholly unwarranted and deprive your orators severally of the equal protection of the laws contrary to sections 1, 4 and 12 of the Florida Declaration of Rights and contrary to the fourteenth amendment to the Federal Constitution.

That under date of October 27th, 1931, the defendant, the said Hon. Ernest Amos, Comptroller, addressed the following communication to all and singular the tax collectors of the several counties of the State of Florida:

"Tallahassee, Florida, October 27, 1931.

To the Tax Collector addressed,

DEAR SIR: Chapter 15624, laws of Florida covering occupational license taxes on retail stores repealed only that part of Section 1197 (926) compiled general laws of 1927 which relates to retail stores and left the provisions for license taxes to be paid on wholesale stores in full force and effect.

Section 1149 places a State license tax on the capital stock covered in each place of business, thereby making it necessary for the tax collector to collect the State license taxes from each separate furniture store and in addition thereto to collect a county license tax.

Yours truly, Ernest Amos, Comptroller."

[fol. 77] That the meaning of paragraph 1 of said communication is that wholesale grocery concerns as Louis Chitty Consolidated Grocery Company operating in Jacksonville, Florida, and others as hereinbefore set forth, will continue to be subject to section 1197 Compiled General Laws of 1927, paying only $1.50 per thousand on its merchandise carried, instead of $3.00 per thousand as is charged to your orators Winn & Lovett Grocery Company upon merchandise carried in its warehouse pursuant to all the provisions of sections 2 and 5 of said chapter 15624.

That the meaning of the second paragraph of said communication is that said Comptroller acting under the advice of the Attorney General construes said Chapter 15624 to be wholly inapplicable to furniture dealers, regardless of whether they operate one retail store or many retail stores, and the basis of that construction appears to be on account of the fact that section 1149 Compiled General Laws provides a special graduated license tax upon furniture dealers dependent upon capital stock invested in such business, that on account of the provisions of said section 1149, the tax collector of Duval County, one of the defendants in this cause, accepted from the Independent Furniture Company as explained in the affidavit of G. N. Wood filed in this cause October 19th, 1931, the sum of $10.00 on each retail place of business operated by that company in Duval County. That said Chapter 15624 contains no such exemption or exception in favor of furniture dealers, and the at-

tempted exemption so allowed or attempted to be allowed by the defendants in this cause is, as your orators are advised and believe and so allege, wholly unauthorized and [fol. 78] unwarranted. That in like manner the said defendant Comptroller, and the several tax collectors of the State of Florida, acting under his instructions by and with the advice of the said Attorney General are undertaking to exempt from the provisions of said Chapter 15624, not only filling stations engaged exclusively in the sale of gasoline and other petroleum products, but also to exempt filling stations selling those products plus tires and tubes. That the forms sent out by the defendants to tax payers throughout the state carry among others, the following instruction on the back thereof as to the application and administration of said act—"Filling stations engaged exclusively in the sale of gasoline and other petroleum products, and tire and tube dealers are not subject to this tax." That section 1061 Compiled General Laws provides a graduated tax for tire and tube dealers, depending upon the population of the town or city where such dealers do business, and it is on that section that the defendants acting on advice of the Attorney General are undertaking to exempt tire and tube dealers though no such exemption is found in said Chapter 15624. That the attempted exemption in favor of tire and tube dealers has been inaugurated as your orators are advised and believe and so allege, for the special benefit of the Standard Oil Company, which company operates a chain of several hundred filling stations in the state of Florida, and sells through them not only gasoline and other petroleum products, but also automobile tires and tubes.

That when said Committee substitute for House Bill 8-X was pending in the House of Representatives on June 19th, 1931 *so* appears by the House Journal of that date, pages 26 and 27, Mr. Lewis of Gulf County offered the following amendment to be added to the end of section 8 of said Bill:

[fol. 79] "Provided, however, the term "store" shall not apply to or be construed to mean or include any store primarily operated for the sale of gasoline or other petroleum products."

That in lieu of said proposed amendment a substitute amendment was offered creating the proviso which is now

found at the end of section 8 of said Act, and the amendment as adopted specially confines the exemption to filling stations exclusively engaged in the sale of gasoline and other petroleum products. Such being the declared intent of the Legislature, the defendents in this cause have no authority to vary the provisions thereof by the administration of said act, or otherwise.

That by the same process of reasoning the defendant comptroller, as your orators are advised and believe and so allege, is undertaking himself and to have the several tax collectors of the state to exempt automobile dealers whether second hand or otherwise, from the application of said chapter 15624 because section 1056 compiled general laws provides a graduated tax upon merchants of that kind. That in Jacksonville Florida William Catlin Inc. operates three second hand automobile places of business, and one, R. S. Evan, operates three second hand automobile places of business, one in Jacksonville, one in Tampa and one in Miami selling at retail nevertheless, under the construction and applications of said act by the comptroller as aforesaid, such operators of "stores" are not subject to said Act. That in like manner the defendant Comptroller is undertaking to exempt merchants dealing in cigars and tobaccos who are specially taxed by section 1120 Compiled General Laws. That the United Cigar Stores Company is a nationally known chain store organization, and has two cigar stores in the City of Jacksonville, and many other cigar stores [fol. 80] in other cities of the State of Florida selling at retail that the Smoke Shop Inc. has two cigar stores in the City of Jacksonville, selling at retail, but under the construction of the Comptroller, as aforesaid, none of the said cigar stores are subject to the provisions of said Act; also to exempt hay, feed and grain dealers at retail, who are required to pay a graduated tax according to population by Section 12 of Chapter 14491 Laws of 1931; also to exempt restaurants, cafes and eating saloons, because under sections 1256 Compiled General Laws, a graduated tax is provided, depending upon the number of seats found in each such place of business. That the Florida Fig Stand, Inc., operates four places of business in Jacksonville, Morrison's Cafeteria operates two places of business and National Baking and Lunch Company operates three, all in the City of Jacksonville, Florida, nevertheless, under the construction

and application of said act now being made by the Comptroller as aforesaid, none of said concerns are required to pay taxes as called for by said chapter 15624.

That there are still other merchants listed in the license taxing chapter of the Compiled General Laws, who are otherwise taxed than by section 1197 Compiled General Laws, and as to all such merchants and dealers, your orators are advised and believe and so aver, that the defendant comptroller acting under the advice of the attorney general of this state, is undertaking to exempt them from the provisions of said act.

That said chapter 15624 by virtue of sections 1, 5 and 8 thereof, carries its own definition as to who shall be subject to the license taxes sought to be imposed thereby; and [fol. 81] section 14 of said act in express words, repeals all laws and parts of laws in conflict therewith. And your orators are advised and believe and so allege that if all or any part of said act is a valid law, the exemptions aforesaid which are sought to be allowed by the defendant comptroller as aforesaid, are wholly invalid and unauthorized and will operate to deprive your orators severally of the equal protection of the law, contrary to the provisions of the State and Federal Constitutions severally as aforesaid.

XVI

Your orators would further show that the classifications aforesaid so attempted to be made by the Act of 1931, and the further classifications of the Comptroller as aforesaid, for the imposition of license taxes severally, have no reasonable basis, and have no just relation to the subject-matter to which the same are applied. That said attempted classifications and discriminations are unjust and arbitrary, and in derogation of secs. 1, 4 and 12 of the Declaration of Rights of the Florida Constitution, and in derogation of the "due process" and "equal protection of the laws" clauses contained in the 14th Amendment to the Federal Constitution. That the rights of these complainants secured by said constitutional provisions will be violated in all the particulars aforesaid if the provisons of said Act are applied and enforced according to the terms of said act or according to the exemptions attempted by the Comptroller. That the provisions of said Act aforesaid, which must be condemned when tested by said Constitutional provisions, constitute

such material parts of said Act that nothing thereof remains which can be enforcible, with the result that said Act is void in its entirety. That the elimination of the discriminatory features of said Act above pointed out, leaving the re-
[fol. 82] mainder in force, will produce a result not contemplated or intended by the Legislature, so that said Act is wholly void and *o*noperative, leaving in full force and effect the license Act of 1915, as now found in Revised General Statutes of Florida, and also found in Compiled General Laws of Florida.

[fol. 83] XVII

Your orator would further show that on account of the manner in which they severally find it necessary to carry on their several businesses an essential part thereof constitutes interstate commerce. That your orator Lewis K. Liggett Company in manner aforesaid supplies its retail store units in Florida and other states upon requisitions received from its several store managers by periodical shipments either weekly or twice a month from its central warehouse in New York City or from factories with which prior contracts have been made by your complainant in contemplation of such regular periodical shipments. That the making of contracts with the factories for such supplies and shipments, the transmission of orders from the store managers and the making and transportation of such regular periodical shipments, all and singular, constitute interstate commerce. That in order to keep fresh drugs and medicines on hand in such retail store units and prevent accumulation of old stock it is necessary to make frequent shipments as aforesaid from fresh sources of supply. That frequent shipments as aforesaid aid your complainant in securing a rapid turnover in said retail units. That what is true of complainant Lewis K. Liggett Company is in large part true also of Winn & Lovett Grocery Company which places orders with factories and producers, fruit and vegetable canneries in various parts of the United States upon contract calling for periodical shipments for your complainant either to Jacksonville or Sanford, Florida from which collecting depots distributions by frequent shipments and deliveries are then made to the respective retail stores of the Winn & Lovett Grocery Company situated at different points in Florida as aforesaid. That what is true of Lewis K. Lig-

gett Company and Winn & Lovett Grocery Company is also true, though in lesser degree, of Paxson's, Inc. in the han-
[fol. 84] dling of its business in the seven Florida Retail shoe stores as aforesaid. That other chain or multiple store operators find it necessary to carry on their several businesses in the State of Florida substantially in the same way. That merchants operating single stores only get their supplies principally from local jobbers or wholesale merchants. That members of cooperative groups such as the McKesson Drug Stores, Better Food Stores, and I. G. A. Stores get their supplies from local wholesale distributors, in which no interstate transaction is involved, and by getting frequent supplies from such local distributors, such competitors of the chain stores are able to obtain rapid turnover of their stock in the manner hereinbefore explained. That the aforesaid interstate characteristics of chain store operations was well known to the Legislature when said Chapter 15624 was passed. That the Legislature, being so informed, designedly undertook by the oppressive, arbitrary and excessive license fees called for by said Act to burden the interstate characteristics of your orators' several businesses as aforesaid. That the commerce clause of the Federal Constitution entitled your orators to carry on the interstate features of their several businesses without hindrance and without such burdens as are attempted
[fol. 85] to be imposed by said Act by virtue of those interstate characteristics of said businesses, and on account of said rest*ir*ctions and burdens upon said interstate commerce, conducted as aforesaid, the said Act is void because in conflict with the commerce clause of the Federal Constitution.

That national food chain store operators buy annually in Florida millions of dollars worth of citrus fruits, irish potatoes, strawberries, fresh vegetables, canned grapefruit, and other Florida products, from producers and cooperative marketing associations, which are distributed in interstate commerce, and sold through their respective retail stores in other states direct to consumers. That in like manner, your orator Louis K. Liggett Company buys from Florida producers large quantities of citrus fruits, fruit juices, extracts and byproducts for interstate transporation and sale through its retail stores in other States. That your orators

are advised and believe by the decision of the Supreme Court of Florida in the case of—

Lee v. Clearwater Growers Assn., 93 Fla. 214, 111 So. 722.

That neither such buying nor such selling constitutes monopoly, or any tendency in that direction.

[fol. 86] XVIII

Your orators would further show that each of them have tendered to the defendant R. F. Bowden, Tax Collector of Duval County, Florida, all the license taxes assessable for State and County licenses in Duval County, Florida, under sec. 926 Revised General Statutes (sec. 1197 Compiled General Laws), and other related parts of the license laws in force prior to said Act of 1931, but the said Tax Collector of Duval County has refused to accept the same. That your orator Winn & Lovett Grocery Company has in like manner tendered to the defendant R. B. Council, Tax Collector of Leon County, Florida, all license taxes payable under said prior law for the operation of the said Winn & Lovett Grocery store owned and operated in the City of Tallahassee, Florida, as aforesaid, but the said Tax Collector of Leon County has refused to accept the same. That these complainants stand ready, and hereby offer to pay to the several tax collectors of the respective counties of Florida where their said businesses are severally located all license taxes due and payable under the law in existence prior to said Act of 1931, and in like manner these complainants stand ready, and hereby offer to pay to the several municipalities where their said stores are severally located the license taxes due said municipalities under said old law. Nevertheless, the said Tax Collector of Duval County, and the said Tax Collector of Leon County, acting on instructions from the defendant Ernest Amos, Comptroller of the State of Florida, will not accept the license taxes tendered under the old law for State and County licenses by these complainants, as aforesaid. And the said Tax Collectors and the said Comptroller now threaten to cause these com- [fol. 87] plainants severally, and their several store managers, to be prosecuted for doing business without a license, and for other violations of said Act of 1931; also to impose 25% penalties as provided in sec. 4 of said Act. That by

reason of the penalties imposed by said Act of 1931, and sought to be imposed by the defendants, the several businesses of these complainants are in great jeopardy, and the injury to their several businesses will be irreparable unless the defendants severally are restrained and enjoinfed from enforcing or caused to be enforced the provisions of said license act of 1931. That on account of the action of the defendant Comptroller, as aforesaid, these complainants are unable to procure from the several County Tax Collectors where they do business, licenses as provided under the old license act. That in like manner, on account of the action of the Comptroller, as aforesaid, these complainants are unable to procure licenses from the several municipalities of the State of Florida where they severally do business, the said Comptroller claiming to have the right exclusively to issue to store operators such as these complainants a State and County license as provided for in sec. 3 of said Act of 1931, and municipal license as provided in sec. 11 of said Act, and the right to countersign all licenses as provided in sec. 12 of said Act. That the actions of said Comptroller and of said Tax Collectors of Duval County and Leon County, as aforesaid, are and will leave these complainants wholly unprotected and subject to prosecutions under sec. 9 of said Act, on account of having no State or County license under which to do business, and under sec. 11 of said Act, on account of having no municipal license in the several municipalities where these complainants severally do business. That these complainants severally are [fol. 88] without remedy unless this Honorable Court will issue its writ of injunction, restraining the said defendants severally from attempting to enforce said Act of 1931, and from interfering with the lawful procurement by these complainants of proper licenses, as aforesaid, under the prior law.

The premises being considered, your orators pray that the defendants severally may be required to answer this amended bill of complaint, but not under oath, (answer under oath being waived), as specifically as if interrogated thereto; and further pray:

1. That the entire Act known as Chapter 15624 Laws of Florida, 1931, and otherwise designated as Committee Substitute for House Bill No. 8-X, be declared null and void and of no force and effect.

2. That if the whole of said Act be not declared entirely null and void, that the discriminatory features thereof heretofore complained of in this amended bill, be declared null and void, and unenforceable.

3. That the defendant Ernest Amos, Comptroller of the State of Florida, and the defendant R. F. Bowden, Tax Collector of Duval County, and the defendant R. B. Council, Tax Collector of Leon County, be severally restrained and enjoined until the further order of this Court from enforcing, or causing to be enforced, any of the provisions of said Act of 1931, and from interfering with these complainants, or other merchants similarly situated, from procuring proper State and County, and Municipal licenses under the license laws heretofore in force; and that upon final hearing such injunction and restraining order may be made permanent.

[fol. 89] 4. That the defendants severally may be restrained from allowing the exceptions and exemptions complained of in sec. XV of this amended bill.

5. That these complainants, and others similar- situated in the State of Florida, may have such other and further relief as equity may require and as to this Honorable Court may seem meet.

That the Court will grant unto your Orators the State's Most Gracious Writ of Subpœna, directed to Ernest Amos, Comptroller of the State of Florida, R. F. Bowden, Tax Collector of Duval County, Florida, and H. B. Council, Tax Collector of Leon County, Florida, returnable according to law, and the course of this Honorable Court.

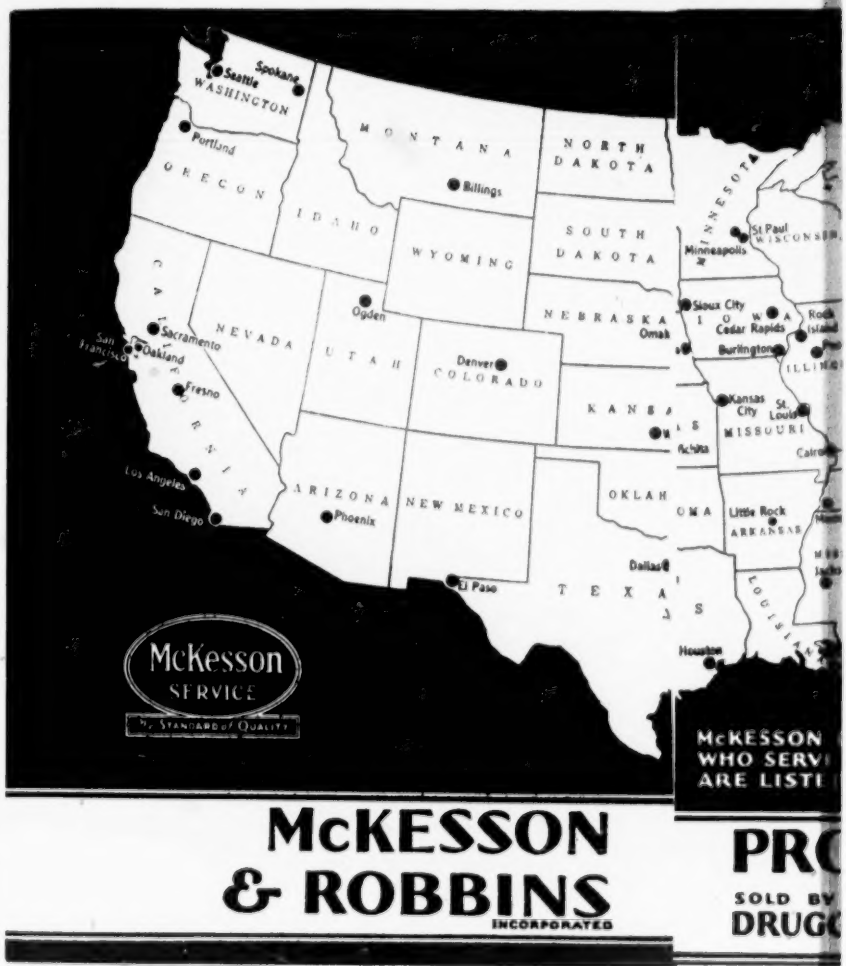
And your orators will ever pray, etc.

L. K. Liggett Company, by R. T. Lewis, Jr., Store Manager. Winn & Lovett Grocery Company, by W. R. Lovett, President. Paxson's Inc., by Roy H. Paxson, President. (Corporate Seal.) Thos. B. Adams, Kay, Adams, Ragland & Kurz, Solicitors for Complainants.

[fols. 90 & 91] *Duly sworn to by W. R. Lovett et al. Jurats omitted in printing.*

(Here follows Exhibit 1 to Amended Bill of Complaint, side folio 92)

EXHIBIT NO. 1 - TO AMENDED BILL OF



McKESSON & ROBBINS
INCORPORATED

PRODUCTS
SOLD BY
DRUGGISTS EVERYWHERE

[fol. 93] EXHIBIT 2 TO AMENDED BILL OF COMPLAINT

McKesson & Robbins, Inc., products are distributed throughout the entire civilized world by their own houses. They are sold by leading druggists everywhere.

A List of McKesson Companies

Alabama:

McKesson-Bedsole-Colvin, Inc., Mobile
McKesson-Doster-Northington, Inc., Birmingham
McKesson-Berry-Martin Company, Florence

Arizona:

McKesson-Western Wholesale Drug Company, Ltd., Phœnix

Arkansas:

McKesson-Lincoln Company, Little Rock

California:

McKesson-Kirk-Geary Company, Ltd., Sacramento
McKesson-Langley-Michaels Company, Ltd., San Francisco
McKesson-Langley-Michaels Company, Ltd., Oakland
McKesson-Langley-Michaels Company, Ltd., Fresno
McKesson-Western Wholesale Drug Company, Ltd., Los Angeles
McKesson-Western Wholesale Drug Company, Ltd., San Diego

Colorado:

McKesson-Colorado Wholesale Drug Company, Denver

Connecticut:

McKesson-Whittlesey Company, New Haven
McKesson & Robbins, Incorporated, Bridgeport

Florida:

McKesson-Groover-Stewart Drug Company, Jacksonville
McKesson-Groover-Stewart Drug Company, Tampa
McKesson-Groover-Stewart Drug Company, Miami
McKesson-Groover-Stewart Drug Company, Orlando

Georgia:

McKesson-Murray Drug Company, Augusta
McKesson-Riley Drug Company, Macon

Hawaii:

McKesson-Langley-Michaels Drug Company, Ltd., Honolulu

Illinois:

McKesson-Churchill Drug Company, Peoria
McKesson-Fuller-Morrison Company, Chicago
McKesson-Hartz Drug Company, Rock Island
McKesson-Schuh Drug Company, Cairo

Iowa:

McKesson-Churchill Drug Company, Burlington
McKesson-Churchill Drug Company, Cedar Rapids
McKesson, More & Porterfield, Inc., Sioux City

Kansas:

McKesson-Potts Drug Company, Wichita

Kentucky:

McKesson-Peter-Neat-Richardson Company, Louisville

Louisiana:

McKesson-Parker-Blake Corporation, New Orleans

Massachusetts:

McKesson-Eastern Drug Company, Boston
McKesson-Eastern Drug Company, Springfield

Michigan:

McKesson-Farrand-Williams Company, Detroit

Minnesota:

McKesson-Minneapolis Drug Company, Minneapolis
McKesson-St. Paul Drug Company, St. Paul

Mississippi:

McKesson-Van Vleet-Ellis Corporation, Jackson

Missouri:

McKesson-Faxon Drug Company, Kansas City
McKesson-Merrill Drug Company, St. Louis

Montana:

McKesson-Midwest Drug Company, Billings

Nebraska:

McKesson-Churchill Drug Company, Omaha

New Jersey:

McKesson-Roeber-Kuebler Company, Newark

New York:

McKesson-Gibson-Snow Company, Inc., Albany
McKesson-Gibson-Snow Company, Inc., Buffalo
McKesson-Gibson-Snow Company, Inc., Rochester
McKesson-Gibson-Snow Company, Inc., Syracuse
McKesson-Gibson-Snow Company, Inc., Troy
McKesson-Gibson-Snow Company, Inc., Bronx Branch, New York City
McKesson-Gibson-Snow Company, Inc., Eisen Branch, Yonkers
McKesson-Gibson-Snow Company, Inc., Littell Branch, New York City
McKesson-Gibson-Snow Company, Inc., Brooklyn Branch, New York

Ohio:

McKesson-Hall-Van Gorder Company, Akron
McKesson-Hall-Van Gorder Company, Cleveland
The McKesson-Voegler Drug Company, Cincinnati

Oregon:

McKesson-Pacific Drug Company, Portland

Pennsylvania:

McKesson-Gibson-Snow Company, Scranton

Rhode Island:

McKesson-Eastern Drug Company, Providence

South Carolina:

McKesson-Murray Drug Company, Columbia

Tennessee:

McKesson-Duff Drug Company, Chattanooga
McKesson-Berry-Martin Company, Nashville
McKesson-Van Vleet-Ellis Corporation, Memphis

Texas:

McKesson-Crowdus Drug Company, Dallas
McKesson, Kelly & Pollard Company, El Paso
McKesson-Southern Drug Company, Houston

Utah:

McKesson-Ogden Wholesale Drug Company, Ogden

Virginia:

McKesson-Roanoke Drug Corporation, Roanoke

Washington:

McKesson-Spokane Drug Company, Spokane
McKesson-Stewart-Holmes Drug Company, Seattle

West Virginia:

McKesson-Huntington Drug Company, Huntington

Canada:

McKesson & Robbins, Limited, Montreal

Norway:

Isdahl & Co. A/S., Bergen

[fol. 94] EXHIBIT 3 TO AMENDED BILL OF COMPLAINT

Grocers:

Abdullah Elijah 1300 W Duval	3-9152
Abdullah George 31 Stonewall	5-9859
Abdullah Paul 600 Washington	5-9231
Abdullah Sam 456 Phelps	5-9935
Abraham Bros 301 Magnolia	5-9706
Abraham John 803 Jefferson	5-9518
Adams General 1021 Madison	5-9771
Adams Street Market 1204 W Adams	5-5933-W
Albert & Bros 1290 Davis	3-9408
Albert George 12th & Phœnix	5-9260
Allen Bros 2257 Oak	7-2181
Amber Bros 3108 Main	5-7729
Anderson's Groc & Mkt 3628 Park	2-1897
Anton Louis 1601 Davis	3-9440
Arnau's Cash Groc & Mkt 3509 Pearl	3-0646
Assaf N A 1023 Dora	5-9527
Atlantic Groc & Fruit Co 3556 St Johns av	7-8655
Atlantic Provision Co 1013 Myrtle av	5-2293
Atter Sam 502 Davis	5-9584
Avondale Gro 3550 St Johns av	7-2191
Azar A Mrs 201 Park	5-9387
Bailey H C 1100 Davis	5-6189
Barkat Abraham 720 Johnson	5-2994-J
Barkat Tom 1300 W Adams	5-9943
Bell Grocery Co 2034 Davis	3-1690
Belote Gro 3221 Pearl	5-5899-J
Bernreuter J L rear 3807 Main	5-5397
Bettoli Joseph 928 W Adams	5-9501
Blas J F Grocery 803 Edgewood av	2-9188
Blitch's Red Front Stores	
Ofc Enterprise av	5-7551
Store No 9 19 E Bay	3-1018
No 52 615 Atl blvd S Jax	5-3325
Store No 54 3563 St Johns av	2-1340
Store No 56 2010 Pearl	5-7412
Store No 59 4203 St Johns av	2-2670
Store No 60 2708 Forbes	7-1286
Store No 64 558 Park	7-2363
Store No 65 547 W 28th	3-1428
Store No 66 883 Stockton	7-2468

Store No 68 1506 King	7-2326
Blue Grass Market 825 Newnan	5-9517
Blue Ribbon Groc & Market 423 Main	5-6071
Bostic J B 3618 Kooker	3-9528
Boulevard Groc 1700 Lake Shore dr	2-1290
Branch J C 400 Park	5-9387
Brewington Daisy 1476 Franklin	5-9748
Brinkley H W 2054 Main	5-1510
Brown R L 1001 W Church	5-9728
Bryan R D 1721 Davis	5-4891-W
Burnsed G D 816 McDuff av	2-9129
Busy Bee Groc Co 1611 Lackawanna av	5-9680
Carmen St Gro & Market 2250 Walnut	5-7396
Carter G E Market & Groc Co 3126 Pearl	5-4872
Catter & Sons 1135 W Beaver	5-9511
Center St Grocery 563 Center	5-9482
Church St Cash Grocery 1422 W Church	3-9518
Clayton Thomas 17th	5-9815
Clover Farm Store 900 Talleyrand av	5-7666
Coleman's Grocery 720 Franklin	3-9180
College St Gro 2727 College	7-2154
Compton Bros Lem Turner rd	5-8961-W
Cook & Weeks 351 E 8th	5-4781
Cook's Grocery 1801 E 21st	5-9370
Corey Gro Co 701 Jefferson	5-9380
Corey Grocery Co 1132 W Adams	3-9294
Covington H T 221 Price	5-9654
Crews J P 2346 W Beaver	3-9460
Crews L A 2925 Corinthian av	2-2872
Crews W C 703 McDuff av	7-2103
David A K 1518 King	7-2151
Davis C E St Augustine rd S Jax	5-4046-W
Davis Red Front Grocery 1333 Fla av	5-9750
Davis W A 248 W 16th	3-9272
Daylight Grocery 308 Broad	3-1790
Daylight Grocery Co 308 Broad	3-1792
Debs N 1678 Fla av	5-9453
Debs N 1200 E 1st	3-9481
Dellwood Grocery Co 614 Dellwood av	7-1837
Dennard C B 5015 W Beaver	7-7781
Doomar's Groc & Mkt 157 E 8th	5-4683
Dopson's Groc & Mkt 203 E 21st	5-5118
Easters J F 302 N Stockton	7-4427

Eisenberg M 342 S Myrtle av 3-0071
Elian Abud 101 Park 5-9866
Elian Grocery Co 1500 Franklin 3-9551
Elian N Groc & Mkt 2824 Main 3-9182
Ellias Albert Gro 1155 Hickory 5-9927
Ellias George 540 W State 5-5501
Ellis L J Lackawanna av 7-8264
Fairdeal Gro & Market 1202 Walnut 5-6653
Farris N A 402 Davis 5-3207
Fleeman H T Riverview 5-5938
Fleming E W Co McDuff av 7-2439
Fla Provision Co 702 W Bay 5-0566
Foor A M 700 W 4th 5-5956-J
Foor's Sam Grocery 1603 Louisiana 5-9528
Fulford A A 1501 Fla av 5-9602
Gantling's General Mdse Store 1301 Fairfax 3-9173
Garrett L N 745 Bredier 5-9514
Garrett & Sons 1105 W Church 5-9657
Gason Grocery Co 213 St Johns S Jax 5-4168
Genho Elias 72 S Myrtle av 5-9828
George Albert 809 W 8th 3-9298
Gilt Edge Gro Co 624 Fla av 5-9323
Globe Gro Co Enterprise av 5-4700
Gold Eagle Gro Co 320 Broad 5-3181
Goldsmith S N 864 Franklin 5-9867
Grand H F 273 McDuff 3-9486
Grand H M 456 E 3rd 5-5789
Great Atl & Pac Tea Co 427 Main 3-1215
Great Atl & Pac Tea Co 347 E 3rd 5-9662
Great Atl & Pac Tea Co Cooley av 3-1490
Great Atl & Pac Tea Co 611 Atl blvd S Jax 5-9995
Great Atl & Pac Tea Co 1170 Edgwood av 2-9143
Great Atl & Pac Tea Co 3575 St. Johns av 2-1174
Great Atl & Pac Tea Co 1602 Laura 5-9349
Great Atl & Pac Tea Co 2519 Main 5-9804
Great Atl & Pac Tea Co 1839 Main 3-9541
Great Atl & Pac Tea Co 1802 Walnut 3-9545
Great Atl & Pac Tea Co 1245 King 2-9170
Great Atl & Pac Tea Co 5605 St Johns av 2-9176
Great Atl & Pac Tea Co 150 E 1st 5-9620
Griffen W T 1053 Kings rd 5-3234
Griffin Cash Grocery No 2 1325 W State 3-9268
Grimes W E 2841 Walnut 3-9237

Gwynes J H Mrs 2351 Lackawanna av 5-9289
Haddock E C 2141 Phœnix av 5-2235
Handy-Dandy Groc Co 2784 Herschel 7-7630
Hanne Bros 1452 W Church 3-9113
Harkisheimer Co 25 E Bay 5-7077
Harrell S W 931 Dellwood av 7-3191
Harris H R 1344 E 21st 5-6720-J
Hartley Effie Miss 50 Riverside av 5-9803
Hawkins O H 7308 Main 3-0603
Hazouri A N 1135 Louisiana 3-9240
Hazouri John Mrs 1073 W Ashley 5-9695
Hazouri Louie Meats & Gro 908 Davis 5-9693
Hearn & Co 1724 Davis 5-9283
Hill D N 2155 Lackawanna av 7-1106
Hill W H 3303 Plymouth 7-5140
Hilow Geo 1420 Davis 3-9455
Hoke C H 3302 Evergreen 5-2416
Holmes J M & Co 19 S Ocean 5-0611
Horne Gro Store 730 Bredier 5-9681
Howard & Goodman 1137 Forest 3-9271
Howard's Corner Grocery 1204 Edgewood av 7-5740
Howard's Groc 652 W 8th 5-9622
Hudson O B 5103 Main 5-4264
Ideal Grocery Co 2575 Lackawanna av 7-1653
Ina Bos 300 Davis 5-9744
Independent Stores Co 20 S Davis 5-0636
Ingels J F 1202 Murray av 7-5884
Isaacs I 1333 Roselle 7-1418
Isdal H 801 Lackawanna av 5-9266
Isenmann Chas 900 Newnan 5-9352
Jackson Clarence J 803 E 56th 5-1157-J
Jacksonville Grocery 1634 Kings rd 3-9400
James Grocery Co Inc Grand Crossing 5-4612
James Grocery Co No 5 104th 2-9156
Japour A J 900 Pippin 5-9746
Japour D 1576 Fla av 5-9170
Japour L 143 E Union 5-2742-W
Japour Peter 1137 Ionia 5-7483
Jenkins John 1615 Johnson 5-9431
John Albert 347 Dellwood av 5-9291
Johnson J E Mrs 722 E 56th 5-6067-J
Johnson L O 909 Hogan 5-5577
Jones Henry T 1702 Swift 3-9163

Jones Willie 975 W 5th 5-8049-J
Jordan Economy Gro 1500 Main 5-9397
Joseph A 122 Dora 3-9184
Joseph A Groc 1200 Forest 5-9458
Joseph Charlie 1105 Hogan 5-9577
Joseph Charlie 1032 Fla av 5-9522
Joseph George 1001 Julia 5-9534
Joseph S & Bros Fruits and Vegetables, Fancy and Staple Groceries, Prompt Delivery Service, 229 Broad 3-0480
Joseph S & Bros 2027 Pearl 5-3346
Joseph Tony 2901 Main 5-9725
Joy L E 502 McDuff av 2-9145
Julia St Grocery 302 W State 3-0853
Kass Gro Co 426 W Bay 5-6131
Kelly T J 2510 Phœnix av 5-9362
Kennedy J C 6124 Norwood av 5-0567
Kings Road Grocery & Mkt 2702 Kings rd 5-8247-J
Kirkland Grocery 2098 Forrest 5-9875
Koelman E D Groc 4442 Monerief rd 5-6205-J
Koons Cash Store 2050 Phœnix av 3-9132
Koons R L 2050 Phœnix av 5-4903
Korey George M Cash Groc Co 2331 Herschel 7-1022
Korey & Abraham 603 Liberty 5-9921
Kowkab & Son 3202 Myrtle av 5-9810
Kowkabany C J 1004 Myrtle av 5-9367
Kowkabany M 1001 W Duval 5-9592
Kowkabany N Market & Groc 101 E 10th 5-2632
Kress Groc & Market 935 W Monroe 5-9778
Kristle Grocery & Market 3927 Main 5-7717
Lackawanna Gro Co 2584 Lackawanna av 7-2156
LaVilla Park Cash Grocery 1401 W Church 3-9172
Leslie J K Evergreen av 5-9623
Lewis E 1298 Pearl 3-9517
Liberty St Grocery 1654 Liberty 5-9642
Lincoln Anna C Mrs 1702 E Beaver 3-9496
Lincoln Grocery Co 530 Johnson 5-9128
Lindsay D J 1500 Davis 5-9781
Lisle W A 1334 Kings rd 5-9636
Lohr John S 818 McDuff av 7-5512

Loudan's Cash Grocery 915 Lewis 5-9616
Louis Cash Grocery 1601 Myrtle av 5-9648
Lowe S B Mrs 1426 Miller av 3-9216
MacInnes Grocery & Market Kooker 5-9429
Mack's Grocery & Market 526 Spearing 5-5380
Mackoul Frank 102 S Myrtle av 3-9515
Markovitz V 2107 Lackawanna av 5-9481
Martin D W 1545 E 8th 5-9133
Mathews D E 296 Woodlawn 5-9538
Mathis Cash Gro 51 Oak 5-9860
McCormick C W 1502 Evergreen av 5-1737
Meyers Cash Gro 2163 Mars av 5-9240
Michael Gro Co Magnolia & St Johns av 5-7524
Mike Bros 902 Fla av 5-9381
Millan James 1511 Pine Grove av 2-9167
Monerief Cash Groc 2201 Monerief av 5-9402
Montgomery Cash Grocery 1654 Cleveland 3-9165
Moonshine Gro 21st & Fisher 5-9598
Mordt Groc Co 316 Cedar S Jax 5-9270
Morgan J M 6518 Evergreen av 5-8836-J
Morrison Groc Co 4005 Talleyrand av 5-9197
Moses Alex 1125 Julia 5-9259
Mosley K A 1400 Jefferson 5-9254
Mosley S 735 W 3rd 5-2096
Mott-McCall Co 480 Riverside av 7-2146
Murrell C W Atl blvd S Jax 5-7131-J
Nader Milk Depot 855 Stockton 2-9153
Namey Sam 1264 Kings rd 5-9157
Napoli Frank 530 Davis 5-1405
Nash Frank 1525 Wilcox 5-4888-W
National Gro Co 202 Fla av 5-4267
Nobles J C Grocery Lake Shore dr 2-9147
[fol. 95] Noel Gro & Market 732 LaFayette 5-3034
Norse Abraham 702 Market 5-9625
O K Gro 504 Fla av 5-0623
O'Driscoll J S 1708 E 21st 5-5677-W
Ossi A R 1003 Davis 3-1436-J
Ossi Bros 869 Fla av 5-7652-W
Panos Gus 301 Main 5-1377
Parker J H & Bros Talleyrand & 27th 5-3742
Parmenter Grocery 2885 Evergreen av 3-9266
Patterson J J 301 E 21st 5-9763

Paul J E & Sons 1418 Myrtle av 3-0911
Paul's Groc Store 930 Rosselle 7-2121
Pearl St Gro 1856 Pearl 5-9627
Peoples Grocery & Market 336 E 10th 5-9618
Phifer V L 3203 Lackawanna av 7-2106
Phillips & Jones Gro Co Edgewood av 7-1071
Phoenix Avenue Groc & Mkt 1101 E 15th 5-2247
Phoenix Cash Groc Co 5411 Buffalo av 3-9181
Piggly Wiggly Jax Co
Store No 1 3860 Pearl 5-9784
Store No 2 340 Riverside av 5-4364
Store No 3 1919 Main 5-6642
Store No 4 345 E 3rd 5-1277
Store No 5 141 Broad 5-9884
Store No 6 415 Main 3-0701
Store No 7 3635 St Johns av 2-1503
Store No 8 1516 King 7-5031
Store No 11 104 St John av S Jax 5-9848
Store No 12 1043 Park 7-4749
Store No 13 1188 Edgewood av 7-4089
Store No 15 2801 Main 5-1792
Store No 20 705 Kings rd S Jax 5-2635
Store No 26 2421 W Beaver 7-8149
Store No 27 2695 Post 7-6156
Pinedale Grocery 3601 Lenox av 7-5790
Porter John E 1250 E 14th 5-2890
Post St Grocery & Market 2961 Post 7-3914
Preston Gro Co 1208 Lackawanna av 5-9732
Purity Groc Co 300 W 33rd 5-1863
Rabban J T 1004 Myrtle av 5-8500-W
Raffo Sam 727 Fla av 3-9523
Rahaim George 1518 Enterprise av 5-0548-J
Rahaim Grocery & Market 928 Hogan 3-9537
Rahaim Joe 1443 W Beaver 5-9296
Rahaim John 1001 Myrtle av 5-1724
Red Corner Gro Store 2675 Enterprise av 5-7166-M
Red Star Gro Store 760 W Union 5-9964
Rizk Joe 1301 Davis 3-1188-R
Roberts F M Grocery 2414 Evergreen av 5-9667
Rodd Joseph 519 W State 3-9119
Rose's Cash Grocery 1753 Market 5-7892
Roselle St Gro & Market 2002 Roselle 7-2162
Rowe Burt E 100 Broadway 5-9677

Rust F A 1502 Kings rd 5-9261
Safar A 2033 Davis 5-9724
Safar A E 736 Davis 3-9533
Saig Louis Groc & Mkt 630 Johnson 5-9720
Sanitary Gro 825 Talleyrand 5-4366
Sanitary Grocery Co 1401 Enterprise av 3-9190
Saour Bros 1068 Fla av 5-9568
Saporita Stephen 302 Cleveland 5-9243
Saunders Clarence Stores
Store 101 27 W Bay 5-9660
Store 102 1928 Main 5-9670
Store 103 1032 Park 2-9155
Store 104 110 St Johns av S Jax 5-9672
Store 105 324 Broad 5-9664
Saxby Cain 1818 E 21st 5-9590
Seaman M J 752 DeWitt 3-9344
Seaman M J 1612 W Beaver 3-9477
Sebra Toney G 1123 Myrtle av 5-5361
Seeba Chris 1116 Kings rd 5-9303
Selber's Gro 1749 Ionia 5-6397
Serve U Grocery Co 2510 Oak 7-1508
Service Grocery 1138 Kings rd 5-9358
Setzer M 1449 E Duval 3-0097
Setzer's Stores
No 1 1705 Silver 5-6633
No 2 209 W 11th 5-1124
No 3 20 E 8th 5-1111
No 4 1449 Market 5-1834
Shahood Allen 1115 Jackson 5-7325-M
Shahood George 1271 W Union 3-9191
Shatkowsky Fannie Mrs 1216 Fla av 5-9262
Sheffield & Faulkner Ortega 2-9151
Shields Gro & Market 303 E Adams 5-2603
Shields Harvey Old St Augustine rd 5-4509-R
Silverstein A Mrs 1702 E Church 5-3572
Simons S A 1856 Pearl 5-5788
Sixteenth St Groc & Mkt 53 E 16th 5-0775
Sixty-Third St Groc 635 E 63rd 5-9542
Skaff D 1020 Fla av 3-9416
Slocum Harry 1003 Missouri 3-9195
Smith F A Mrs 929 Jefferson 3-9117
Solomon B 1251 W Church 5-9520
Soud A 1100 Julia 5-9919

Soud Bros 706 Davis 5-3591
Soulis Peter 22 Margaretta 5-9904
Star Grocery Co 502 Davis 3-9331
Steele's Cash Grocery 2740 Franklin 3-9345
Stokes J W 5930 Lem Turner rd 5-5548-R
Summers Grocery & Market Lem Turner rd 5-8095-R
Susman Morris 930 E Union 5-8504
Swift William 1800 Walnut 3-9169
Taylor G L Orange Pk rd 2-9172
Tenth St Gro & Mkt 10th 5-4886
Tracy A C 4725 Lackawanna av 7-3370
Tutson Samuel 1901 Windel 5-4350
Tyler Gro Co 404 W Bay 5-3251
Tyson R R 406 Chelsea av 5-7380
Uneeda Cash Gro 713 Main 5-6717
Watts J S Fruit & Vegetable Market 1000 Atl blvd S Jax 5-1291
Townsend C I 1776 Evergreen av 5-9562
Tutson Samuel 1901 Windle 3-9155
Uneeda Cash Gro 811 Main 5-6717
Watts J S Fruit & Vegetable Market 1000 Atl blvd S Jax 5-9377
Weeks O B & Son Lem Turner rd 5-8120-J
Weston G W 821 Darwin 5-9333
Whiddon's Cash Stores
Main Ofc 703 E Ashley 5-2667
No 1 212 Washington 5-5512
No 2 2708 Forbes 7-6701
No 3 556 Riverside av 7-1879
No 4 2051 W Beaver 7-1319
No 6 1186 Edgewood av 7-1230
No 7 3585 St Johns av 2-2137
No 8 1641 Main 5-5246
No 9 1913 Main 5-5193
No 10 2540 Oak 7-3023
No 11 2804 Main 5-5203
No 12 351 E 3rd 5-5510
No 13 2902 Pearl 5-5442
No 15 Pearl 5-5487
No 16 422 Fla av 5-5319
No 17 419 Main 5-5639
No 18 1516 King 7-2244
No 19 Masonic bl S Jax 5-5396

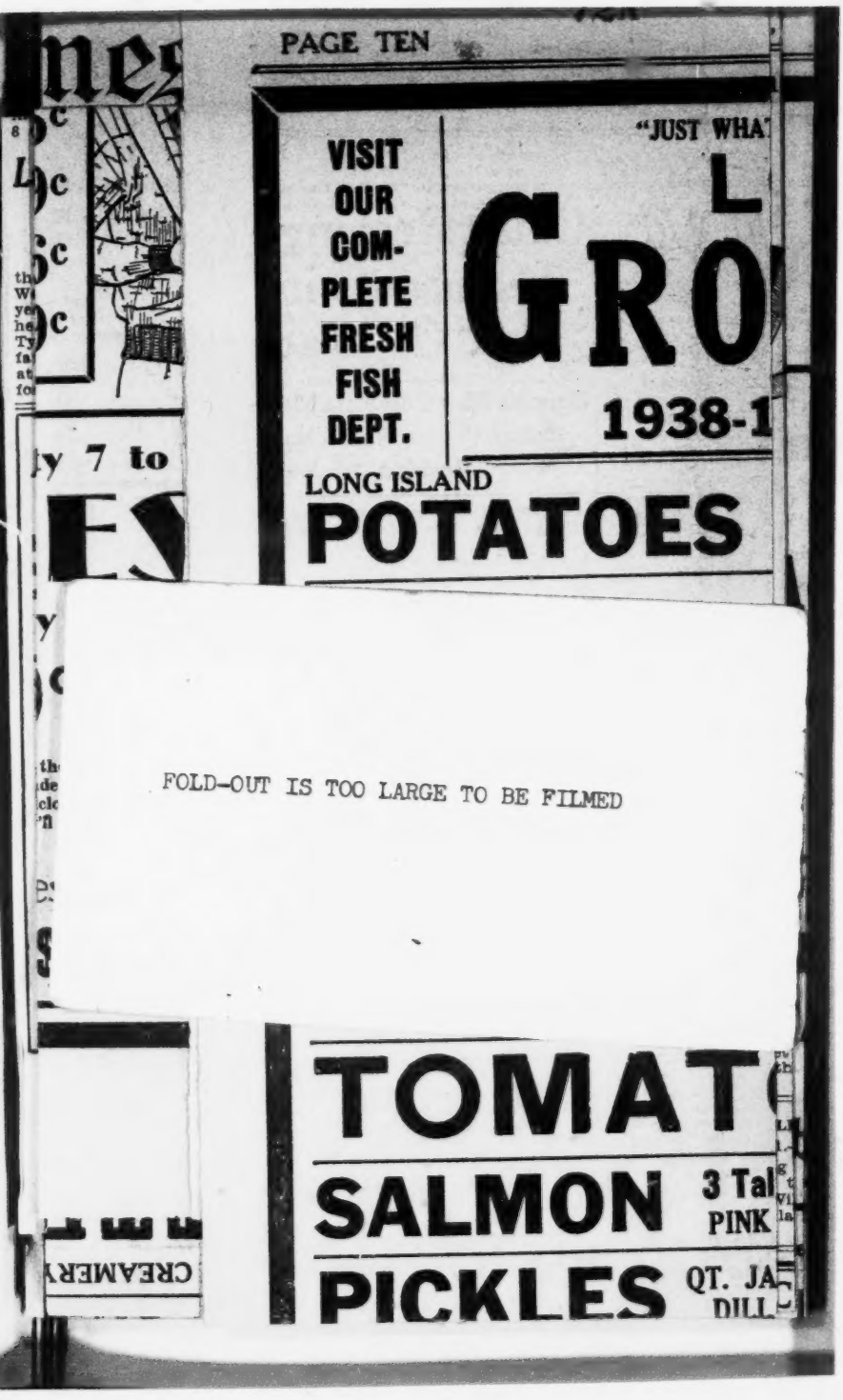
No 20 566 Park 7-2312
No 21 2636 Lackawanna av 7-2268
No 22 1268 McDuff av 7-1808
No 23 351 E 8th 5-5431
No 24 700 Newman 5-5358
No 25 446 McDuff av 7-1806
No 26 44 E 1st 5-5305
No 27 2214 Phoenix av 5-5316
No 28 28th 5-0228
No 30 2042 Roselle 7-2091
No 33 1012 Park 7-2361
No 34 704 Kings rd S Jax 5-5266
No 37 Forrest S Jax 5-5342
No 38 Lem Turner rd 5-5272
No 39 2902 Corinthian av 2-1372
No 40 4905 Lakeshore dr 2-1243
No 41 600 Hendricks S Jax 5-5600
No 42 3105 Main 5-5580
No 44 3919 Main 5-5532
No 46 863 Stockton 7-2231
Prem Station 521 Laura 5-4641
White Star Gro Co 723 Forrest 5-3766
Whiteway Grocery Atl Blvd S Jax 3-9410
Whiteway Groc & Market 809 W 8th 3-9298
Williams B B 350 Kings rd S Jax 5-6676
Williams Groc & Market 1243 Jessie 3-9393
Winn & Lovett Groc Co Inc Enterprise 3-2480
Produce Dept W Beaver 5-1330
Executive Dept Hildebrandt bl 5-2312
Wood J C Grocery Co 1454 E Duval 5-9255
Wurm Adolph 3953 St Johns av 2-2169
Yazge Balach 1702 Harrison 5-9854

Grocers, Wholesale

City Grocery Co ACL Whse 16 3-0750
Clark & Lewis Inc 844 E Bay 3-0625
Cumberland & Liberty Mills Co Viaduct 5-3102
Frieseke Wholesale Groc Hubbard 5-6122
Hagin-Peters Co ft Hogan 5-1964
Lewis-Chitty Consolidated Co 218 E Bay 5-7914
Libby McNeill & Libby Union Term 5-3892
Manucy J E 26th 5-0751

McNerny Grocery Co Riverside Viaduct 5-0087
Peninsular Naval Stores Co Union Term 5-0498
Reid Murdoch & Co 760 W Bay 5-2422
Southern Grocery Co 402 E Bay 5-2249
Stinson Sharman Co ft Newnan 5-7411
United Produce Co Enterprise av 5-5215
Zaring C W & Co 835 E Bay 5-2837
Zaring C W & Co 710 W Bay 5-2444

(Here follows Exhibit 4, section of Florida Times-Union, September 12, 1931, side folio 96)



VISIT OUR COM-PLETE FRESH FISH DEPT.

"JUST WHA

L

GRO

1938-1

LONG ISLAND

POTATOES

FOLD-OUT IS TOO LARGE TO BE FILMED

TOMAT

SALMON 3 Tal

PINK

PICKLES QT. JA

DILL

CREAMERY

Cohen Brothers

The Big Store

QUALITY

CLOTHES

[fol. 97] EXHIBIT 5 TO AMENDED BILL OF COMPLAINT

This Agreement, made this — day of ——, 192-, by and between —— Company of Florida, party of the first part, hereinafter known as the "Company," and —— ——, of the —— of ——, County of ——, State of ——, party of the second part, witnesseth:

The Company proposes to offer during the term of this Agreement to a selected list of Retail Grocers, certain advantages as hereinafter outlined. The Company agrees to give to the second party the right to use the name "Clover Farm Store" and further agrees to sell all merchandise which it may offer to the second party on a limited Profit Basis.

Upon the signing of this contract, the party of the second part is given the right to become a member of the Clover Farm Stores Company, whose stockholders are Independent Retail Grocers of Ohio, Pennsylvania, Florida, North Carolina, Indiana and any other State where their members may be located, provided his or her application for membership is favorably passed upon by the Company.

The second party agrees to purchase One (1) Share of the Capital Stock of The Clover Farm Stores Company at the Par value of One Dollar ($1) said stock being fully paid and non-assessable, the second party not being liable for any debt, failure or liability of any other member of The Clover Farm Stores Company or for any debt or liability of the Company.

The second party agrees to paint the front of his or her store building with The Clover Farm Stores Company's standard color, the Company agreeing to furnish the necessary paint which will be furnished to the second party f. o. b. its warehouse or factory. The second party further [fol. 98] agrees to paint the front of said building at least once a year thereafter, and upon termination of this contract from any cause whatever, the second party agrees upon such termination to immediately repaint his or her store front in entirely different colors.

The Company agrees to furnish to second party, One regulation Clover Farm Store sign, and other supplies, valued at One Hundred Dollars ($100), the sign being twelve (12) or fourteen (14) feet in length, twenty (20)

inches in height, all letters raised wood covered with pure gold leaf, containing twenty-one (21) special letters reading "The Clover Farm Stores Co." the second party agreeing to maintain said sign on and across the front of said store. Upon demand by the Company for the return of the sign due to failure of second party to comply with the terms of the contract, delivery shall be made promptly to the Company's warehouse, delivery charges prepaid, and thereupon the Company will refund to second party the cost price of the sign to the Company, less a depreciation of thirty-five (35%) per cent per annum.

The second party agrees at the time of signing this contract to pay to the Company the sum of One Hundred Dollars ($100) which will constitute security for the return of said sign on demand, and also for services rendered and supplies furnished to second party, the Company also furnishing at its own expense all legal advice and assistance that may be necessary to second party in opening a Clover Farm Store.

The second party agrees during the life of this contract to purchase from the Company as far as possible his or her requirements in dry groceries, and further agrees not to purchase through specialty men, except by consent of the company's president, and also to purchase from the Company, or its authorized packers, manufacturers or wholesalers, his or her requirements in merchandise bearing the [fol. 99] Clover Farm label or brand (second party being under no obligation to purchase any fixed amount), the said Clover Farm Label being Trade Mark registered in the United States Patent Office. The second party agrees to pay for all merchandise purchased from the Company or its authorized distributors on their terms, and any extension of credit beyond their terms shall be a matter of special arrangement with the Company or its distributors, and must be satisfactorily and adequately secured.

The second party agrees not to sell or assign this contract, or the sign except by the written consent of the Company. This Agreement shall continue between the Company and the second party for a period of Two years from the above date and shall automatically renew itself for additional periods of Two years each unless notification to terminate the same is served in writing by either party on

the other at least thirty (30) days prior to the expiration of any term of the contract.

The second party agrees to pay to the Company the sum of One Dollar ($1.00) per week payable in advance during the term of this contract to assist in defraying the cost of printing, postage and office expense necessary in the interest of the second party, and also for the items from "A" to "O" hereinafter mentioned in this contract, there being no membership dues or assessments.

The second party is given the advantage of operating as a Clover Farm Store with the advantages of co-operative purchasing and advertising privileges and modern merchandising methods, advice and instructions in modern store stock arrangement, without requiring the second party to invest capital in other companies or to sell or in any other way part with the control or ownership of his or her business.

[fol. 100] The Company agrees to suggest plans and layout of shelving and fixtures according to modern merchandising standards and to give the second party advice which will enable him or them to operate his or their store in conformity with other stores operated according to The Clover Farm Stores Company standard.

The Company agrees at its own expense to furnish a representative at its headquarters to keep in touch with the second party, advising him or them regarding merchandising methods and to act in the capacity of supervisor, the second party agreeing to follow the instructions generally of the supervisor and to maintain his store in general conformity with the standard required of other members of The Clover Farm Stores Company.

The Company agrees to furnish the second party:

(a) Plans for opening Sale.
(b) One Special Bulletin Monthly.
(c) Collection Department Service.
(d) Plans for Initial Stock Reducing Sale.
(e) Special Window Posters for holiday sales.
(f) Not less than two (2) Window Posters per week.
(g) One complete set of shelf price cards with holders.
(h) One (1) Clover Farm Store News bulletin monthly.
(i) Plans for special merchandising events twice each year.

(j) To assist in securing advertising and other special allowances.

(k) One Instruction Bulletin covering window trim and store display per week.

(l) One (1) copy of printed diagram explaining the scientific arrangement of merchandise for Clover Farm Store.

(m) To assist in arranging for Newspaper advertising, [fol. 101] featuring items sold by second party and other members of The Clover Farm Stores Company.

(n) To assist second party and other members of The Clover Farm Stores Company in the advantageous purchase of merchandise not offered for sale by the Company.

(o) Fifty-two (52) Clover Farm Brand products during each year to be indicated as Competative Items which will be offered to the second party at the Company's cost, plus not to exceed three (3%) per cent, exclusive of cash discount.

This Agreement, as signed, is binding upon the successors, administrators or assigns of each of the parties hereto.

In witness whereof the parties have hereunto set their hands and seals on the day and year above written.

—— ——, First Party. —— ——, Second Party.

Witness: —— ——.

Endorsement: No. —. Clover Farm Store Contract between —— ——, Florida, and —— ——, of ——. Dated —— —, ——.

(Here follow Exhibits 6 and 7 to Amended Bill of Complaint, side folios 102 and 103.)

Home Baking SPECIALS

Take advantage of these low I.G.A. prices to stock your pantry with home baking needs---and save money. On I.G.A. open shelves you'll find everything you need to make baking easier ---and more economical, too.

IGA CAKE FLOUR . . .
IGA BAKING POWDER
Reg. Pkg.
Pound Can
Both for
41c

Eagle Milk
IGA Nut-Oleo
THE WORLD'S BEST
5 Bars Octagon Soap
19c

Sliced
BEETS
IGA
No. 2 Cans
10c

IGA PLAIN OR SELF-RISING
Flour 5 lbs. 19c-12 lbs. 42c-24 lbs. 75c

IGA COCOANUT 15c

Find everything you need to make baking easier ---and more economical, too.

IGA CAKE FLOUR . . . Reg. Pkg.
IGA BAKING POWDER Pound Can / Both for **41c**

Eagle Milk
IGA Nut-Oleo
THE WORLD'S BEST
5 Bars Octagon Soap **19c**

Sliced
BEETS
IGA
No. 2 Cans **10c**

IGA PLAIN OR SELF-RISING
Flour 5 lbs. 19c-12 lbs. 42c-24 lbs. 75c

IGA EXTRACTS 2-OZ. BOTTLE—ABSOLUTELY PURE **20c**

IGA COCONUT 15c
4-OZ. TOY PAIL

SALT, Round Package . . . 8c

PORK & BEANS, IGA, Per Can 5c

CRISCO 3 Pound Can **57c**
FOR HOMES THAT WANT THE BEST IN COOKING

CORN STARCH
IGA SPICES . . 9c

TALL CAN
SALMON 10c

PEACHES, IGA, Y. C. Fancy Table No. 2½ can 18c

IGA COCOA 1-LB. CAN **25c**

SNOWDRIFT 3 POUND PAIL **45c**

PREMIUM
CHOCOLATE ½-LB. PKG. **25c**

COMPOUND
LARD, 3 lbs. . . 25c

SHAVERS
GRAPEFRUIT JUICE . . . . 4-OZ. CAN **5c**

EVAP. PEACHES 2 POUNDS **25c**

MILK, IGA, Tall Cans, 3 for 20c

PURE PORK SAUSAGE, lb. 19c
COUNTRY SMOKED SAUSAGE lb. . . . 12½c

Selox 2 for 25c
GIANT SIZE

Oxydol 3 for 25c
QUICK RICH SUD

TUESDAY, OCTOBER 27th, ONECO, FLORIDA

The Big IGA Home Town Jubilee, an old-fashioned field day. Games, races, plenty of fun and eats is given you FREE by your IGA Stores in appreciation of your past patronage. Join the crowd at Oneco and have a grand, good time at our expense. Ask your IGA grocer about the valuable prizes. Everybody invited.

HOME OWNED
I.G.A. STORES

Brooms
5 STRING
Painted handle
50c VALUE
21¢

IGA
PORK & BEANS
Regular Size
5¢ can

Announcing The National IGA Stores CASH PLAN.

In accordance with our national policy of continually effecting economies in every possible way, in our constant obligation to offer the consuming public the highest quality foods at the lowest possible prices, we are adopting the "STRICTLY SELF SERVE CASH AND CARRY" plan of operation.

Sasser's Grocery & Meats	Enterprise Market
315 So. Ft. Harrison Ave.	619 Cleveland St.

FREE—3 Big Food Demonstrations—FREE
Coffee, Sandwiches & Cakes Served All day. Come to our party and SAVE with our New Cash plan and New Low prices.

FANCY WHOLE GRAIN **RICE** — 5 POUNDS — 17c

CAN **TOMATO JUICE** 5c	CAMPBELL'S CAN **TOMATO SOUP** 7 1-2c
IGA 1 LB. CAN **BAKING POWDERS** 21c	IGA **CATSUP, Lge. Bottle** 10c
IGA PINTS **SALAD DRESSING** 19c	IGA OLD FASHIONED ½ PINT **RELISH SPREAD** ..12 1-2c

IGA **MILK** — 6 Small or 3 Tall Cans — 18c

IGA **TOMATOES** — NEW SOLID PACK 3 No. 2 Cans — 22c

IGA **COFFEE** — I BLEND 29c — G. BLEND 24c — A BLEND 19c

IGA 2 FOR **PANCAKE FLOUR** 19c	IGA 22 OZ. BOTTLE **SYRUP, maple & cane** 23c
6—5c PKGS. **MATCHES** 15c	IGA or P. & G. 3 FOR **SOAP & POWDERS** 10c
IGA 20 OZ. **ROLLED OATS** 8c	IGA PKG. **CORN FLAKES** 5c

IGA SPAGHETTI **MACARONI—NOODLES** — SPECIAL 2 Pkgs. — 11c

IGA HIGHEST QUALITY **FLOUR** — 12 LBS. 42c — 24 LBS. 75c

TALL PINK **SALMON. Can** 10c	ARMOUR'S CAN **CORNED BEEF** 15c

KEW-BEE Supreme Loaf
Practical Sliced Bread
Split Top Supreme Quality
10c

SWIFT'S PREMIUM LB. **HAMS, 1-2 or whole** .. 19c	COMPOUND **LARD, 2 Lbs.** 15c
WESTERN LB. **PORK CHOPS** 17 1-2c	IGA BEST QUALITY Country Roll **BUTTER Lb.** 37c
FANCY WESTERN ANY CUT **STEAKS, Lb.** 25c	FANCY WESTERN **POT ROASTS, Lb.** 17c
YORK COOKING **APPLES, 5 Lbs.** 17c	LARGE ICEBURG **LETTUCE. 2 For** 15c
LARGE IRISH **POTATOES, 10 Lbs.** .. 17c	FANCY YELLOW **BANANAS Doz.** 10c
FRESH DRESSED CHICKENS **HENS .25c—FRYERS .29c**	IGA SMOKED **BACON, Lb.** 15c

WE DELIVER ORDERS OF $2.00 OR MORE

[fol. 104] IN CIRCUIT COURT OF LEON COUNTY

[Title omitted]

MOTION TO DISMISS—Filed Nov. 12, 1931

The defendants, Ernest Amos, as Comptroller of the State of Florida, R. B. Council, as Tax Collector of Leon County, Florida, and R. F. Bowden, as Tax Collector of Duval County, Florida, moves the Court to dismiss the amended bill of complaint, because:

First. There is no equity in the amended bill of complaint.

Second. The amended bill of complaint does not make or state a sufficient cause of action to entitle the complainant to the relief sought.

[fol. 105] Third. The amendments to the bill of complaint do not add any ground for equitable relief.

Fourth. Chapter 15624, Laws of Florida, Acts of 1931, was duly enacted in accordance with the requirements of the Constitution of the State of Florida.

Fifth. Chapter 15624, Acts of 1931, does not deny to the complainants the equal protection of the laws.

Sixth. Chapter 15624, Acts of 1931, does not impose a burden on interstate commerce.

Seventh. Chapter 15624, Acts of 1931, levies an excise tax for revenue purposes, and is within the power and discretion of the Legis-ture to enact, and does not exceed the constitutional limitations or restrictions in such matters.

Eighth. The amended bill of complaint alleges conclusions of law wholly insufficient in a court of equity to authorize the granting of the relief prayed.

Ninth. The classification of stores made for taxation purposes under the provisions of Chapter 15624, Acts of 1931, is reasonable and operates equally and uniformly on all stores similarly situated.

Tenth. The Legislature of Florida has unlimited power and discretion in the matter of levying excise taxes, except that such taxes shall be geographically equal and uniform,

and the taxes levied and imposed by Chapter 15624, Acts of 1931, are geographically equal and uniform.

[fol. 106] Eleventh. The taxes levied and imposed by Chapter 15624, Acts of 1931, do not violate or transcend any provision of either the State or Federal Constitution.

Respectfully submitted.

Cary D. Landis, Cary D. Landis, Attorney General; H. E. Carter, H. E. Carter, Assistant Attorney General, Solicitors for Defendants.

[fol. 107] In Circuit Court of Leon County

[Title omitted]

Affidavit of G. D. Wood—Filed Oct. 19, 1931

State of Florida,
County of Duval, ss:

On this day personally appeared before me, G. D. Wood, who, being by me first duly sworn, says that he is Secretary-Treasurer of Independent Furniture Company, Inc., a Florida corporation, doing business in Duval County, Florida. Affiant further says that his Company has intended to file petition of intervention in said cause. That after the same had been prepared and signed by his attorney affiant was informed by the Tax Collector of Duval County, one of the [fol. 108] defendants in said cause, that said Tax Collector would accept from affiant's said Company payment of license fees on its furniture business on the basis of the old license act, and accordingly affiant, for his said Company paid said tax collector license fees for the years 1931-32 on the basis of the Act in force prior to 1931, and received licenses covering said businesses. Affiant further says that the kind of business, and the places where conducted, and the manner of conducting business by this affiant's said Company are all set forth in draft of petition for intervention prepared for filing in said cause, copy of which is hereto attached and made a part of this affidavit. That said petition is true in substance and in fact in all respects save and except paragraph VII thereof setting up tender to the

Tax Collector and refusal. That, as before stated, after said petition was prepared, the Tax Collector changed his mind, at least accepted payment of license fees on the old basis, as above stated.

G. D. Wood.

Sworn to and subscribed before me this October 8, A. D. 1931. A. B. Weil, Notary Public, State of Florida at Large. (Notarial Seal.)

[fol. 109] Exhibit 1 to Affidavit of G. D. Wood

In Circuit Court of Leon County

Louis K. Liggett Company, a Corporation, and Winn & Lovett Grocery Company, a Corporation, Complainants,

vs.

Ernest Amos, as Comptroller of the State of Florida, R. B. Council, as Tax Collector of Leon County, Florida, and R. F. Bowden, as Tax Collector of Duval County, Florida, Defendants

Petition for Intervention.

To one of the Honorable Judges of the above-styled Court, in chancery sitting:

Comes now Independent Furniture Company, Inc., a Corporation organized and existing under and by virtue of the laws of the State of Florida, with its office and principal place of business in Jacksonville, Florida, and prays leave to intervene in said cause, on account of its interest in the subject-matter as hereinafter set forth. And in this behalf petitioner would show:

[fol. 110] I

It hereby adopts the averments of the original bill of complaint filed in said cause, pointing out sundry discriminations against multiple store operators created by Chapter 15624 Laws of Florida, 1931, to the same extent as if the petitioner had been named as one of the original complainants in said bill, and this petitioner hereby claims the pro-

tection of secs. 1, 4 and 12 of the Declaration of Rights of the Florida Constitution, and of the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, upon the same grounds and for the same reasons as claimed on behalf of the complainants in said bill.

II

Your petitioner would further show that it was organized in the year 1924, with a capital stock of Twenty-five Thousand ($25,000.00) Dollars, consisting of 250 shares of the par value of $100.00 each. That the officers of your petitioner are as follows:

E. R. Spence, President, owning 125 shares, residing at Jacksonville, Florida;

Z. C. Carter, Vice-President, owning 1 share, residing at Live Oak, Florida;

G. D. Wood, Secretary-Treasurer, owning 124 shares, residing at Jacksonville, Florida.

That E. R. Spence, President of your petitioner, has been a citizen and resident of Jacksonville for the past fifteen years; and G. D. Wood, Secretary-Treasurer of your petitioner, has likewise been a citizen and resident of Jacksonville for the past fifteen years.

[fol. 111] III

That this petitioner, Independent Furniture Company, Inc., owns and operates three retail furniture stores and two warehouses in Duval County, Florida, situated as follows:

Retail Stores:

One retail store located at 915 Kings Road, Jacksonville;

One retail store at Florida Avenue and Jessie Street, Jacksonville;

One retail store at Atlantic Boulevard and Kings Road, South Jacksonville, Florida.

Warehouses:

One warehouse located at 21st and Davis Streets, in the City of Jacksonville, Fla.

One warehouse located at 904 Kings Road, in the City of Jacksonville, Florida.

That the merchandise handled and sold by petitioner through said stores consists of household furniture and house furnishings, principally living room suites, dining room suites, bed room suites, stoves, floor coverings, rugs, linoleums and the like, window shades, etc., etc. That petitioner conducts its said furniture business through said retail stores and warehouses in substantially the same manner that other retail furniture dealers conduct their business in the same localities, except that this petitioner's business is not near so large as some of the others, and this petitioner relies more upon personal solicitation of the trade, than upon advertising.

IV

This petitioner would further show that it buys its goods from factories situated in different parts of the United [fol. 112] States on 30, 60 and 90 days credit, the same being substantially the same terms of credit allowed to other furniture dealers in Duval County, although such dealers operate single stores, and do a much larger volume of business. That your petitioner sells goods on the installment plan, approximately 95% of its sales being made on that basis, the usual terms of sale being 10% cash as down payment, 2% of the amount of the bill per week if paid weekly, or 8% of the amount of the bill per month if paid monthly. That your petitioner seeks to avoid carrying a large stock in warehouse, but endeavors to ascertain the demands of the particular communities in which its retail stores are located, and seeks to increase its volume of business through the use of solicitors.

V

Your petitioner would further show that there are a number of large retail furniture dealers doing business in the City of Jacksonville, Florida, owning and operating single stores, but who severally do a much larger volume of retail business than is done by your petitioner in all three of its said retail stores and two warehouse- combined. That

the Rhodes-Futch-Collins Furniture Company does approximately three times as much business as your petitioner; the Jones Furniture Company does approximately five times the volume of business; the Chadwick Furniture Company approximately five times as much; The Standard Furniture Company approximately five times as much; and the Haverty Furniture Company approximately five times as much. That although said single store furniture dealers each do more business than your Petitioner they are charge-[fol. 113] able with an arbitrary State license fee under said Act of 1931 with only $5.00 each; whereas your petitioner for its said three retail stores is chargeable with $5.00 for one store, and $10.00 for each of the two additional stores, making an arbitrary state license fee on petitioner's said three retail stores of $25.00. That in addition to said arbitrary State license fee, your petitioner will under said Act be required to pay $3.00 per $1,000.00 upon the value of the entire stock carried in said three retail stores, plus the stock in the warehouses, for a State license, and when the amount of the State license is so arrived at, there must then be added 25% thereof for County license and 25% additional for municipal license, unless otherwise controlled by the charter of the City of Jacksonville. Thus in sundry ways the license burdens imposed upon your petitioner's said business are many times greater than the license burdens imposed upon a similar business of similar size if done at one location or under one roof.

VI

Your petitioner would further show that the arbitrary classifications made by the Act of 1931, as pointed out in said bill of complaint, particularly in sec. II thereof, are unreasonable, and without any proper foundation as applied to petitioner's business conducted through its three retail stores and two warehouses, all in Duval County, Florida, as aforesaid. That no reason exists why it should pay a higher license tax on account of the mere fact that it does a retail business in more than one location. That the excessive and unequal burdens of license tax which will apply to petitioner's business, if said Act of 1931 is enforced, will deprive this petitioner of its property without due process of law, and deprive this petitioner of the equal

protection of the laws contrary to the Declaration of [fol. 114] Rights of the Florida Constitution, and contrary to the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution.

VII

Your Petitioner would further show that it has tendered to the Tax Collector of Duval County, Florida, the State and County license chargeable under the old law existing prior to the Act of 1931, but said Tax Collector, acting under instructions of the Comptroller of the State of Florida, and pursuant to the provisions of said Act of 1931, has refused to accept the same, and has refused to issue a license to this Petitioner on account of the provisions of said Act of 1931. That unless the Court's writ of injunction is granted against the said Tax Collector of Duval County this Petitioner will be subjected to the penalties provided for by said Act, and its said business will be put in great jeopardy.

Wherefore your petitioner prays that the Court may allow this petition of intervention, and will grant to this petitioner the same relief against the enforcement of said Act which is prayed for in the aforesaid bill of complaint, to the same extent as if it had been one of the original complainants.

Independent Furniture Company, Inc., by —— ——, President. Gov. Hutchinson, Attorney for Intervenor.

[fol. 115] In Circuit Court of Leon County

[Title omitted]

Order Allowing Intervention of Southern Stores Corp. et al.—Nov. 12, 1931

This cause came on further to be heard, after due notice and was argued by counsel for the respective parties, and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed as follows:

That the petitions of Southern Stores Corporation, a Corporation, Nunnally Company, a Corporation, and Mel-

ville Shoe Corporation, a corporation, be and the same *the same* are hereby granted and said petitioners, respectively be and they are hereby allowed to intervene and are made parties to this cause.

Done and Ordered at Chambers, at Quincy, Florida, this November 12th, 1931.

E. C. Love, Circuit Judge.

[fol. 116] In Circuit Court of Leon County

[Title omitted]

Petition of Intervention—Filed Nov. 12, 1931

To one of the Honorable Judges of the above-styled Court, in chancery sitting:

Comes now The Nunnally Company, a Corporation organized and existing under and by virtue of the laws of the State of Delaware, having an office and place of business in Jacksonville, Florida, and prays leave to intervene [fol. 117] in said cause, on account of its interest in the subject-matter as hereinafter set forth. And in this behalf petitioner would show:

I

It hereby adopts the averments of the amended bill of complaint filed in said cause, pointing out sundry discriminations against multiple store operators created by Chapter 15624, Laws of Florida, 1931, to the same extent as if the petitioner had been named one of the original complainants in said bill, and this petitioner hereby claims the protection of sec. 1, 4 and 12 of the Declaration of Rights of the Florida Constitution, and of the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and of the Commerce Clause of the Federal Constitution, upon the same grounds and for the same reasons as claimed on behalf of the complainants in said amended bill.

II

That this Petitioner owns and operates four retail stores in the State of Florida, distributed as follows: Duval

County, two, Dade County, two. That the merchandise sold in each of said stores consists of candies, soda-water and luncheons. That this petitioner conducts its stores in the same manner as other candy, soda-water and luncheon establishments are conducted in their said several localities, attempting, however, to give the public a better service than is given by other merchants doing the same sort of business, and attempting to give the customers of this petitioner better values for their money—all of which efforts on the part of this petitioner are mere matters of competitive merchandising.

III

Petitioner would further show that it carries a compara- [fol. 118] tively small stock of goods in each of the 4 Florida stores, shipping to said stores from its candy factory in Georgia all of the confectioneries sold in these stores and purchasing from local merchants and from factories situated in different parts of the country the merchandise sold over its soda fountains and served in its restaurants. That in order to keep its stock of candies, etc, carried in its said Florida retail stores fresh and attractive to the retail trade petitioner makes frequent interstate shipments to said stores from its Georgia factory upon periodical interstate requisitions therefor, sent by mail, wire or telephone, from petitioner's managers of said Florida stores. That petitioner buys its other merchandise on substantially the same terms as merchandise is bought by other merchants doing business in different parts of the State, whether such merchants operate single or multiple stores. That for the most part petitioner purchases merchandise on terms of thirty days payments, and the same terms are available to petitioner's competitors who are in good financial standing. That your petitioner does not do extensive advertising of its several businesses—that due to the fact that petitioners' stores are widely scattered any advertising in one town where a store is located would be of little value as advertising in other towns where other stores are located. The petitioner's business in each town where its store or stores are operated has been built up by the energy and effort of petitioner's officers and individual managers employed to conduct such stores.

IV

Petitioner would further show that the arbitrary classifications made by the Act of 1931, as pointed out in said amended bill of complaint, particularly in sec. VII thereof, are unreasonable, and without any proper foundation as [fol. 119] applied to this petitioner's business conducted through four stores situated in different parts of Florida, as aforesaid. That no reason exists why it should pay a higher license than paid by four individual store owners doing a like and equal business to that done by your petitioners. That no reason exists for so greatly increasing petitioner's burden upon four stores simply because they are operated in more than one County, rather than in a single County. That the excessive burdens of license fees imposed by said Act, as pointed out in said Amended Bill, applied to this petitioner's business, carried on as aforesaid, deprive this petitioner of its property without due process of law, and deprive this petitioner of the equal protection of the laws, contrary to the Declaration of Rights of the Florida Constitution, and contrary to the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and will impose burdens on the inter-state characteristics of petitioner's business, as aforesaid, contrary to the commerce clause of the Federal Constitution.

V

Petitioner would further show that it has tendered to the Tax Collectors of Duval County and Dade County the State and County licenses chargeable under the old law existing prior to the Act of 1931, but said Tax Collectors severally, acting under instructions from the Comptroller of the State of Florida, and pursuant to the provisions of said Act, 1931, have refused to accept the same, and have refused to issue licenses to this petitioner on account of the provisions of said Act of 1931, requiring that upon compliance with its provisions such licenses be issued only by the Comptroller of the State of Florida. That the defendant Ernest Amos, Comptroller of the State of Florida, has prepared and distributed to the merchants throughout the State a form of [fol. 120] return for assessment of occupational license taxes on stores operated by multiple owners, on the back of

which there appears information and instructions as to said Chapter 15624 Laws of Florida, 1931, a copy of said form so distributed, is hereto attached, marked Exhibit 1, and made a part of this petition. That the said form together with the information contained on the back thereof, constitute the defendant Comptroller's construction and interpretation of said Act, and shows the manner in which he proposed to enforce the same as against multiple store owners operating in a single county, or operating in more than one county in the State of Florida. That on to-wit, November 6, 1931, this petitioner received from the Honorable Ernest Amos, Comptroller, a communication dated October 31, 1931, in words and figures following, to-wit:

"State of Florida, Comptroller's Office, Tallahassee

Ernest Amos, Comptroller

October 31, 1931.

Re Occupational License under Chapter 15624, Acts of 1931

Nunnally's Co., Atlanta, Ga.

DEAR SIR: Your application for license, as required by the above Act, has not been received and you are hereby notified that unless same is received at this office on or before November 10, 1931, a penalty of twenty-five per cent (25%) will be imposed, as provided under Section 4.
[fols. 121 & 122] Please forward your application promptly on the enclosed blank.

Yours very truly, Ernest Amos, Comptroller.

JCC/j.
Enclosures."

That unless the Court's writ of injunction is granted against the said defendant in said suit, that is to say the Comptroller, and the Tax Collector of Duval County, this intervenor will be subjected to the penalties provided for by said Act and its said businesses, particularly those located in Duval County, will be in great Jeopardy.

Wherefore your petitioners prays that the Court may allow this petition of intervention, and will grant to this petitioner the same relief against the enforcement of said

Act which is prayed for in the aforesaid amended bill of complaint to the same extent as if it had been one of the original complainants.

The Nunnally Company, by T. M. Swift, Store Manager. Thos. B. Adams, A. L. Layton, Attorneys for Intervenor.

Duly sworn to by T. M. Swift. Jurat omitted in printing.

(Here follows Exhibit No. 1 to Petition of Intervention, side folios 123 and 123½.)

EXHIBIT NO. 8 - TO PETITION OF INTERVENTION 123

STATE OF FLORIDA

STATE OF FLORIDA

Occupational License Tax on Stores

No.....

To ....., 193.....
Hon. Ernest Amos,
Comptroller, State of Florida,
Tallahassee.

.....of .....
hereby makes application for license to operate stores in the State of Florida under the provisions of Chapter 15624, Acts of 1931, as follows:

NAME OF STORE	LOCATION OF EACH STORE			Full Actual Value of Stock of Merchandise in Each Store or in Storage
	County	City	Street and Number	

Information on the Law:

When to apply to the Tax Collector

Where the store or stores are located in one county, apply to the County Tax Collector for the license.

When to apply to the Comptroller

Where stores are located in more than one county, apply to the Comptroller, Tallahassee, Florida, for licenses.

The name of the owner, manager, trustee, lessee, receiver or other person desiring such license; the name of such store, the location, including the street number of such store, and the full actual value of the stock of goods, wares, merchandise and commodities owned by the applicant and held in storage to be sold in or through such store must be given. Such application shall be under oath.

ANNUAL LICENSE TAXES ARE AS FOLLOWS:

(1) On one store, Five dollars and $3.00 per $1,000.00 value of stock in store and storage.

(2) On two or more stores, but not over fifteen, located in one county, Ten Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(3) On two or more stores, but not over fifteen, located in more than one county, Fifteen Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(4) On each store in excess of fifteen, but not over thirty, located in one county, Fifteen Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(5) On each store in excess of fifteen, but not over thirty, located in more than one county, Twenty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(6) On each store in excess of thirty, but not over fifty, located in one county, Twenty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(7) On each store in excess of thirty, but not over fifty, located in more than one county, Thirty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(8) On each store in excess of fifty, but not over seventy-five, located in one county, Thirty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(9) On each store in excess of fifty, but not over seventy-five, located in more than one county, Forty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

(10) On each store in excess of seventy-five, located in one county, Forty Dollars for each additional store and $3.00 per $1,000.00 stock in store and storage.

(11) On each store in excess of seventy-five, located in more than one county, Fifty Dollars for each additional store and $3.00 per $1,000.00 value of stock in store and storage.

A COUNTY LICENSE TAX OF TWENTY-FIVE (25%) PER CENT OF THE STATE LICENSE TAX IS IMPOSED ON EACH STORE AS HEREIN DEFINED AND A LIKE AMOUNT FOR EACH INCORPORATED MUNICIPALITY IN WHICH STORES ARE LOCATED, GRADUATED BY THE NUMBER OF STORES IN THE COUNTY OR MUNICIPALITY, ALSO A FEE OF 50c IS REQUIRED FOR EACH LICENSE ISSUED.

All licenses are due and payable on the first day of October of each year and if not paid by the 31st day of October, a penalty of 25% must be imposed.

Full annual rate required to be collected from September 30th to March 31st; half annual rate April 1st to October 1st.

After receiving application for licenses the Comptroller will render to each person, firm, corporation, association or co-partnership making such application, an itemized bill showing the total amount of license taxes due.

Filling stations engaged exclusively in the sale of gasoline and other petroleum products and tire and tube dealers are not subject to this tax.

ERNEST AMOS, Comptroller,
State of Florida,
Tallahassee.

[fol. 124] IN CIRCUIT COURT OF LEON COUNTY

[Title omitted]

PETITION OF INTERVENTION—Filed Nov. 12, 1931

To one of the Honorable Judges of said Court, in chancery sitting:

Come now Mellville Shoe Corporation, a corporation organized and existing under the laws of the State of New York, G. R. Kinney Shoe Company, a corporation organized and existing under the laws of the State of Delaware, J. C. Penney Company, a corporation organized and existing under the laws of the State of Delaware, F. W. Woolworth Company, a corporation organized and existing under the laws of the State of New York, Montgomery Ward & Com-
[fol. 125] pany, a Corporation, and The Great Atlantic & Pacific Tea Company, a Corporation organized and existing under the laws of the State of Arizona, United Cigar Stores Company of America, a corporation organized and existing under the laws of the State of New Jersey, and pray leave to intervene in said cause on account of their several interests in the subject matter as hereinafter set forth. And in this behalf your Petitioners would show:

I

That your petitioners severally own and operate retail stores of the kind, and situated at different points in Florida, as more particularly hereinafter shown, by reason whereof your petitioners severally are materially and vitally affected by the provisions of Chapter 15624, Laws of Florida, 1931, complained of in the amended bill filed, or to be filed in said cause, as now proposed for hearing set before said Honorable Court on November 12, 1931.

II

That your petitioners severally hereby adopt the averments of the amended bill of complaint filed or to be filed in said cause, pointing out discriminations against multiple or chain store operators, created by Chapter 15624, Laws of Florida, 1931, to the same extent as if your petitioners severally had been named as original complainants in said amended bill. That your petitioners severally hereby claim

the protection of sec. 8, art. IV, and sections 1, 4 and 12 of the Declaration of Rights of the Florida Constitution, and the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and of the "commerce clause" of the Federal Constitution, upon the same grounds and for the same reasons as claimed on behalf of the complainants in said amended bill.

[fol. 126] III

That your petitioner F. W. Woolworth Company operates seventeen retail stores in different counties of the State of Florida. That this petitioner in each of its said retail stores carries and sells a great variety of articles usually and commonly carried in what is known as "5 and 10 cent stores." That the business of your petitioner had its beginning more than a quarter of a century ago with a single store, which business was gradually enlarged by the opening up of additional stores until now this petitioner owns and operates stores in many States, including the seventeen stores in Florida, as aforesaid. That your petitioner's trade is attracted by novelties of many kinds, also house furnishings, crockery ware, light hardware, toys, candies, etc. That in order for petitioner to keep its stocks supplied in said Florida stores it is necessary to make frequent shipments thereto from points in other States upon interstate requisitions made by the several managers of said Florida stores.

V

That your petitioner Mellville Shoe Corporation owns and operates in the State of Florida seven retail shoe [fol. 127] stores in the State of Florida, situated as follows:

Duval County	2
Dade County	1
Escambia County	1
Polk County	1
Hillsborough County	2

That this petitioner owns and operates retail shoe stores in many other States of the United States. This petitioner avers that the manner in which it conducts its said shoe

business in said Florida stores is substantially the same as that used by Paxson's Inc. described in the amended bill filed, or to be filed in said cause.

VI

That your petitioner G. R. Kinney Shoe Company owns and operates in the State of Florida four retail shoe stores, situated as follows:

Duval County	1
Orange County	1
Hillsborough County	2

That your petitioner also owns and operates shoe stores in many other States of the United States. Petitioner avers that the manner in which it conducts its business in said Florida retail stores is substantially the same as that described for and on behalf of Paxson's Inc. as set forth in the amended bill of complaint filed or to be filed in said cause.

VII

That your petitioner J. C. Penney Company owns and operates in the State of Florida three retail department stores situated as follows:

Columbia County	1
Putnam County	1
Seminole County	1

[fol. 128] That this petitioner owns and operates several hundred stores throughout the United States, but only three in Florida, situated as aforesaid. That the business of this petitioner was started more than a quarter of a century ago by J. C. Penney, whose name it bears, with one country store. That the uniform policy of this petitioner for many years has been to use its trained employees for the opening of new stores as managers thereof, and to permit each such new manager to acquire a certain per centage of stock in the Company, which will represent a very substantial portion of capital invested in the new store of which he is to be manager, contemplating that such new manager will acquire a home and become affiliated with the people of the community where such new

store is located; and under that arrangement, which has been pursued for many years, the several managers of the several stores of this petitioner, receive a substantial share of the profits made by the several stores of which they severally are managers. That this petitioner selects for its places of business towns of moderate size, where its stores, carrying high grade merchandise, wearing apparel, and goods usually found in a small department store will be accessible to farmers, laborers and other classes of working people, who have limited means, and desire to avail themselves of the opportunity to buy standard goods at low prices. Pursuing that policy, this petitioner located its three Florida stores, as aforesaid, rather than in the large cities of the State, such as Jacksonville, Tampa and Miami.

VIII

That your petitioner, Montgomery Ward & Company has for many years been, and still is, a large mail order house, with its headquarters in Chicago, Illinois, selling goods by [fol. 129] catalogue, by mail or express deliveries throughout the United States. That within the last few years it has opened a number of retail stores in different parts of the United States, and has opened one such retail store in Florida, situated in Manatee County. That said store in Manatee County is the only store which this petitioner owns and operates within the State of Florida. That it carries in said store a large assortment of general merchandise such as is usually found in a small department store, wearing apparel, household furnishings, kitchen utensils, hardware, farming implements, automobile tires and tubes, radios and the like. That it conducts its said business in Manatee County in substantially the same manner as any other similar store is conducted in that part or any other part of the State of Florida.

X

That your petitioner, The Great Atlantic & Pacific Tea Company, owns and operates 226 retail grocery stores scattered throughout the State of Florida in the several counties thereof. That this petitioner also owns and operates in the City of Jacksonville, Florida, a large warehouse, from

which it supplies merchandise to its retail store units in different parts of the State of Florida. That the retail grocery stores operated by this petitioner are of the same kind, and carry substantially the same classes of goods, and conducted in substantially the same manner as other grocery stores operated by its competitors in various parts of the State of Florida, examples of which are shown by the amended bill of complaint filed in said cause. That on page 13 of exhibit 4 attached to said amended bill of complaint is an advertisement of goods offered for sale by this petitioner in its retail grocery stores situated in the City of Jacksonville, Florida, and the goods listed in said advertisement, and the prices thereof, when compared with similar [fol. 130] goods offered by the Better Food Stores and the Whiddon Grocery Stores, and other grocery stores operated in the City of Jacksonville, as shown by the amended bill filed in said cause, show that this petitioner has very keen competition in the grocery business. That the competition encountered by this petitioner in the City of Jacksonville exists in all other localities in the State of Florida where this petitioner owns and operates stores. That the rapid expansion in the number of stores operated by this petitioner and other grocery concerns in the State of Florida, and elsewhere, during the last decade has been largely caused by the economic changes set forth in said amended bill of complaint, among which are the increased use of automobiles for shopping purposes, the congestion in the old trading centers of such cities as Jacksonville, Florida, and the establishment of a great number of subtrading centers in suburban districts, widely scattered, and convenient to the automobile trading customers. That the clipping from the classified city directory of the City of Jacksonville, Florida, for August, 1931, attached to the amended bill of complaint as exhibit 3, shows how widely distributed are the subtrading centers of the City of Jacksonville, and those sub-trading centers for the most part have been established during the last ten years.

And this petitioner would further show that its business began with one store in the year 1859, and has gradually grown until now it owns and operates more than 15,000 retail grocery stores, distributed throughout the United States from the Atlantic to the Pacific. That its business in Flor-

ida and other States constitutes a national unit of commerce and exchange of food commodities. That throughout the seventy-two years of its business development this petitioner has pursued a uniform policy of bringing about an exchange of food products as directly from the producer to [fol. 131] the consumer as possible, with the least amount of economic waste. That this petitioner annually buys in Florida millions of dollars worth of citrus fruits, canned grapefruit, irish potatoes, strawberries, fresh vegetables, and other Florida products, from producers and cooperative associations, organized under the laws of the State of Florida, which products for the most part are thereafter distributed in interstate commerce and sold through their respective retail stores distributed throughout the United States. That this petitioner also through its store managers in charge of its Florida stores, buy- in Florida many thousand cases of eggs from farmers, and wherever a surplus supply occurs over the local demand, such surplus is moved in interstate commerce to other States where the demand is greater and there sold through this petitioner's retail stores in such other States. That in like manner this petitioner buys very large quantities of foods and food products in other States, from meat packing houses, fruit and vegetable canners, creameries, flour mills, sugar refineries, and from all sources of food supply, and in like manner distributes the same through its retail stores distributed throughout the United States, including its Florida retail stores, upon interstate requisitions received regularly from the store managers of its Florida retail stores and its retail stores in other States. That this petitioner's Florida warehouse, situated at Jacksonville, Florida, and its retail grocery stores situated in various parts of Florida, and its similar warehouses and retail stores situated in other States, are mere temporary depots for the handling and distribution of the great current of interstate commerce in food products carried on by this petitioner, as aforesaid. That its warehouse at Jacksonville, Florida, and similar warehouses in other States, are merely points for breaking bulk in shipments arriving at such warehouse from other States, and from which warehouses small shipments are forwarded weekly, or more often if needed, by motor truck [fol. 132] or rail transportation, to this petitioner's re-

tail stores situated in different parts of Florida and other States, as the case may be. That the same means of transportation which carry food supplies to such retail stores also bring back to such warehouses surplus supplies of eggs and other commodities purchased from producers by petitioner's retail store managers in the respective localities where retail stores are situated, and the surplus supply of eggs and other such products, so collected and brought back to the warehouses, are then combined and forwarded in bulk shipment to other States. That in order to carry on the very large business of this petitioner, as aforesaid, it is necessary to buy in large quantities, and it is necessary to move same first in bulk shipments, and then by broken and smaller shipments for distribution in its retail units, such movements being controlled by interstate requisitions received by mail, or otherwise, from the individual retail store managers. That the method of conducting this petitioner's business by interstate transaction, as aforesaid, is necessary to keep its goods fresh in its retail stores, constantly turning over and attractive to the retail trade. That if there be any distinction between this petitioner's method of doing business, as aforesaid, and the method pursued by individually owned grocery stores, such as those belonging to the Better Food Stores group, or those belonging to the I. G. A organization, as described in the amended bill of complaint, such difference or differences consist chiefly in the interstate characteristics of this petitioner's business, as aforesaid, not present in the business carried on by such individually owned retail grocery stores. That the excessive burdens of license tax sought to be imposed by said Chapter 15624, particularly by secs. 5 and 11 thereof, constitute burdens upon the interstate characteristics of this petitioner's business, as aforesaid, contrary to the commerce clause of the Federal Constitution.

[fol. 133] That, without repetition, this petitioner endorses all of the matters and things set forth in said amended bill of complaint as applies to the retail grocery business carried on in the State of Florida, and further specifically avers that there is no reasonable basis for the arbitrary, oppressive and unreasonable classifications made by said Act, or for the oppressive and discriminatory license fees imposed upon this petitioner by said Act particularly under secs. 5 and 11 thereof.

XI

That your petitioner United States Cigar Stores Company of America owns and operates in the State of Florida eight retail stores situated as follows:

Duval County	2
Dade County	3
Orange County	1
Hillsborough County	1
Palm Beach County	1

That — each of said retail stores your petitioner sells cigars, tobaccos, smokers' supplies, candies, soda water, ice cream, and other like commodities at retail. That your petitioner does not operate or maintain any warehouse in the State of Florida, but that all of the cigars, tobaccos and other like commodities handled through its retail stores located in the State of Florida, as aforesaid, are shipped either direct from manufacturers, or from warehouse of your petitioner located outside of the State of Florida, in substantially the same manner that such supplies are obtained by single owned stores doing a like business. That in order to keep its Florida stores supplied with fresh stock it makes frequent shipments from points in other States to its said [fol. 134] Florida Stores upon interstate requisitions made by the several managers of its said Florida stores. That in its operations your petitioner competes with drug stores, other cigar and tobacco stores, and other classes of stores handling cigars, tobaccos and other like commodities to those handled by your petitioner in its eight Florida stores located as aforesaid.

XII

That your petitioners severally have tendered to the tax collectors of the several counties where their several businesses are situated, as aforesaid, the state and county license taxes chargeable under the old license Act, that is to say sec. 926 Revised General Statutes of Florida, and other sections of the license statute of this State in force prior to said Act of 1931, but the said Tax Collectors of the Counties where said businesses are located, as aforesaid, have severally declined to accept payment of license fees under said Act, and, acting upon instructions from the Honorable

Ernest Amos, Comptroller of the State of Florida, have demanded that these petitioners severally procure licenses from the State Comptroller in manner and form as provided by said Act of 1931. That the said Comptroller, acting in conjunction with said Tax Collectors of the several Counties where these petitioners severally do business, as aforesaid, is threatening to cause penalties to be imposed upon these petitioners severally by way of a 25% additional tax, as provided in sec. 4 of said Act, and by way of criminal prosecutions, as provided in sec. 9 of said Act, if these petitioners severally do not make application for licenses and pay the excessive and arbitrary fees provided for by said Act.

[fols. 135 & 136] That unless the Court's writ of injunction is granted in said cause against the defendant Comptroller, as prayed for in said amended bill, the several businesses of these petitioners located as aforesaid, will be put in great jeopardy, and these petitioners severally will suffer irreparable injury.

Wherefore your petitioners severally pray that the Court may allow this petition of intervention to be filed, and will grant to these petitioners severally the same relief against the enforcement of said Chapter 15624, which is prayed for in and by said amended bill of complaint, to the same extent as if these petitioners severally had been named as complainants in said cause.

Kay, Adams, Ragland & Kurz, Thos. B. Adams,
Attorneys for Intervenors Named in the Introductory Part of This Petition.

Duly sworn to by R. M. Smith. Jurat omitted in printing.

[fol. 137] In Circuit Court of Leon County

[Title omitted]

Petition of Intervention—Filed Nov. 12, 1931

To one of the Honorable Judges of the above-styled Court, in chancery sitting:

Come now Southern Stores Corporation, a corporation organized and existing under the laws of the State of Flor-

ida, having its principal place of business in Miami, Florida, and South Florida Stores Corporation, a corporation organized and existing under and by virtue of the laws of the State of Florida, having its principal office and place of [fol. 138] business in Tampa, Florida, and pray leave to intervene in said cause, on account of their interest in the subject matter as hereinafter set forth, and in this behalf Petitioners respectfully show:

1

Southern Stores Corporation and South Florida Stores Corporation hereby adopt the averments of the Amended Bill of Complaint filed in said cause, pointing out many and sundry discriminations against multiple store operators created under Chapter 15624, Laws of Florida, 1931, the so-called Chain Store Tax Law, to the same extent as if Petitioners had been named as original Complainants in said Bill, and these Petitioners hereby claim the protection of Sections 1, 4 and 12 of the Declaration of Rights of the Florida Constitution, and of the "due process" clause and the "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and of the Commerce Clause of the Federal Constitution, upon the same grounds and for the same reasons as claimed on behalf of the Complainants in said Amended Bill of Complaint, which said Amended Bill of Complaint to that extent, is adopted by Petitioners herein.

2

Southern Stores Corporation owns and operates 28 retail stores in the State of Florida, distributed as follows:

19 in the County of Dade,
2 in the County of Broward, and
7 in the County of Palm Beach.

Petitioner, South Florida Stores Corporation, operates 21 stores in the State of Florida, distributed as follows:

11 in the County of Hillsborough,
8 in the County of Pinellas, and
2 in the County of Polk.

[fol. 139] Both of these Petitioners conduct their stores along similar lines as other grocery stores conducted in their several localities, attempting however, to give the public a better service than is given by other merchants doing the same sort of business, and attempting to give the customers of these Petitioners better values for their money, but they attempt to do so by good merchandising and by careful and proper attention to the details of their business, which same care to attention and detail might or could be given by other retail merchants who are not subject to the tax which is complained of herein.

3

Petitioners represent that in order to carry on their business successfully in the various counties in which they do business it is necessary for them to maintain advertising campaigns in said various counties, since the advertising carried on in any one particular place or county does not seriously advance the business of Petitioners in other counties in which business is done by your Petitioners.

4

The Southern Stores Corporation, one of the Petitioners herein, is the owner of more than a majority of the stock of South Florida Stores Corporation, the other of the Petitioners herein, but the two said Units (that of the Southern Stores Corporation being referred to in its business as the Miami Unit, and that of South Florida Stores Corporation being referred to as the Tampa Unit), are served by separate warehouses, the warehouses for the so-called Miami Unit being maintained in Miami and West Palm Beach, Florida, and the warehouse for South Florida Stores Corporation being maintained in Tampa, Florida.

[fol. 140] 5

By reason of the facts set forth in the two preceding paragraphs your Petitioners would respectfully show that there are certain groups of grocery stores operated in Dade County, Florida, for instance, which would have and enjoy the benefit of a lower license tax as compared with Southern Stores Corporation although receiving the same benefits under multiple Unit management and operation, for which

reason Petitioners charge that the said Chapter 15624, Laws of Florida, 1931, is discriminatory. Petitioners also represent that the same thing is true with respect to the so-called Tampa Unit of Southern Stores Corporation, since in each case the advertising, overhead expense and other expenses incurred by stores operated in certain counties in the State of Florida obtain no or little benefit by reason of their operation under one management. Particularly Petitioners show that the arbitrary classifications made by the said Act of 1931, as shown in said Amended Bill of Complaint and particularly in Section 7 thereof, are unreasonable and without any proper foundation as applied to these Petitioners' business, and that no reason exists why they should pay a higher license than paid by individual owners doing like and equal business to that done by your Petitioners because they are operating in more than one county rather than in a single county. Further, that the excessive burdens of license fees imposed by said Act, as pointed out in said Amended Bill, applied to these Petitioners' business, deprived these Petitioners of their property without due process of law, and deprived these Petitioners of the equal protection of the law, contrary to the Constitution of the State of Florida and contrary also to the Constitution of the United States.

Petitioners would further show that they have made their [fol. 141] tenders of the State and County licenses chargeable under the laws existing prior to the said Act of 1931, but have been advised by the several Tax Collectors that the same were refused, and were advised to pay the taxes required under the said Act of 1931.

Petitioners further say that unless the Court's Writ of Injunction is granted against Defendants in this suit as well as against the Tax Collectors of all of the counties herein named in which these Petitioners do business, these intervenors may be subjected to the penalties provided for by said Act, and their businesses located in the various counties hereinabove named may be placed in jeopardy.

Wherefore your Petitioners pray that the Court may allow this Petition of Intervention and will grant to these Petitioners the same relief against the enforcement of said Act which is prayed for in the aforesaid Amended Bill of

Complaint, to the same extent as if they had been one of the original Complaints.

Southern Stores Corporation, by Walter O. Marshburn Vice-President; South Florida Stores Corporation, by Walter O. Marshburn, Vice-President, Intervenors. Marshburn, Mendenhall & McDonald, Marshburn, Mendenhall & McDonald, Solicitors for Intervenors.

[fol. 142] *Duly sworn to by Walter O. Marshburn. Jurat omitted in printing.*

[fol. 143] In Circuit Court of Leon County

In Chancery

Louis K. Liggett Company, a Corporation; Winn & Lovett Grocery Company, a Corporation, et al.

vs.

Ernest Amos, as Comptroller of the State of Florida; R. B. Council, as Tax Collector of Leon County, and R. F. Bowden, as Tax Collector of Duval County

Final Decree—Dec. 15, 1931

This cause came on to be heard after due notice and was argued by counsel for the respective parties; and thereupon, upon consideration thereof, it was

Ordered, adjudged and decreed as follows:

First. That the application of the Complainants for a temporary restraining order as prayed for in the amended bill of complaint be and the same is denied.

Second. That the motions of the defendants to dismiss the amended bill of complaint herein be and the same is hereby granted, and that the said amended bill of complaint be and the same is hereby dismissed.

[fol. 144] Third. That said complainants do pay the costs of this cause, to be taxed by the Clerk of said court.

Done and ordered at Chambers, at Quincy, Florida, this 15th day of December, A. D. 1931.

E. C. Love, Circuit Judge.

[fol. 145] In Circuit Court of Leon County

[Title omitted]

Notice and Entry of Appeal—Filed Dec. 19, 1931

To the said defendants in said cause and to all others whom it may concern:

Notice is hereby given that Louis K. Liggett Company, a Corporation, Winn & Lovett Grocery Company, a Corporation, and Paxson's Inc. a Corporation, Complainants in said cause, and The Nunnally Company, a Corporation, Mellville Shoe Corporation, a Corporation, G. R. Kinney Shoe Company, a Corporation, J. C. Penney Company, a Corporation, F. W. Woolworth Company, a corporation, Montgomery Ward & Company, a corporation, The Great [fol. 146] Atlantic & Pacific Tea Company, a Corporation, United Cigar Stores Company, a Corporation, Southern Stores Corporation, a corporation, and South Florida Stores Corporation, a corporation, Intervenors, severally hereby take and enter this their several appeal from the final decree signed and entered in said cause on the 15th day of December, A. D. 1931, and recorded in Chancery Order Book No. 9, at page 598 of the records of said Court.

That this several appeal from said decree is hereby made returnable to the Supreme Court of Florida on the 21st day of January, A. D. 1932.

And the Clerk of said Court will please forthwith record this Notice and Entry of Appeal as required by law.

Kay, Adams, Ragland & Kurz, Solicitors for Appellants Above Named.

I, Paul V. Lang, Clerk of the Circuit Court, in and for Leon County, Florida, do hereby certify that the Notice and Entry of Appeal filed on the 19th day of December, A. D. 1931, in said cause of Louis K. Liggett, Winn & Lovett Grocery Company, and Paxson's Inc. a Corporation, complainants, and The Nunnally Company, a Cor-

poration, Mellville Shoe Corporation, a corporation, G. R. Kinney Shoe Company, a corporation, J. C. Penney Company, a Corporation, F. W. Woolworth Company, a Corporation, Montgomery Ward & Company, a corporation, The Great Atlantic & Pacific Tea Company, a corporation, United Cigar Stores Company, a corporation, Southern Stores Corporation, a corporation, and South Florida Stores Corporation, a corporation, Intervenors, against [fol. 147] Ernest Amos, as Comptroller of the State of Florida, R. B. Council as Tax Collector of Leon County, Florida, and R. F. Bowden, as Tax Collector of Duval County, Florida (#2899) was forthwith on the same day duly entered and recorded in Chancery Order Book No. 9, at page 600 of the records of said Circuit Court.

And I further certify that the above and foregoing is a true and correct copy and literal transcript of the record of said Notice and Entry of Appeal as the same appears of record in said Chancery Order Book No. 9, at page 600, of the records of said Circuit Court.

In witness whereof I have hereunto set my hand and affixed the seal of said Circuit Court, this December 19th, A. D. 1931.

Paul V. Lang, Clerk Circuit Court in and for Leon County, Florida. (Court Seal.)

[fol. 148] In Circuit Court of Leon County

[Title omitted]

[fol. 149] Assignments of Error—Filed Dec. 19, 1931

Come now Louis K. Liggett Company, a Corporation, Winn & Lovett Grocery Company, a Corporation, and Paxson's, Inc., a Corporation, Complainants, and the several Intervenors above named, pursuant to their several appeal in said cause, and severally assign the following errors to be considered by the Supreme Court of Florida in said cause:

1. Said Circuit Court erred by its decree of December 15, 1931, recorded in Chancery Order Book 9, at page 598, in that said decree denied the application of said Complain-

ants for a temporary restraining order as prayed for in the amended bill of complaint filed in said cause.

2. Said Circuit Court erred by its decree of December 15, 1931, recorded in Chancery Order Book 9, at page 598, in that said decree granted the motion of said defendants to dismiss the amended bill of complaint filed in said cause, and dismissed said amended bill of complaint.

3. Said Circuit Court erred by its final decree of December 15, 1931, Recorded in Chancery Order Book 9, at page 598, in that the effect thereof was to dismiss the petition of intervention filed by each of said intervenors severally.

[fols. 150-154] 4. Said Circuit Court erred by its decree of December 15, 1931, recorded in Chancery Order Book 9, at page 598, in that the effect of said decree is to hold that Chapter 15624 Laws of Florida, 1931, is valid, and does not violate sections 1, 4 and 12 of the Florida Declaration of Rights in the particulars severally complained of in the amended bill of complaint filed in said cause, and in the several petitions of intervention filed in said cause.

5. Said Circuit Court erred by its decree of December 15, 1931, recorded in Chancery Order Book 9, at page 598, in that the effect thereof is to hold that Chapter 15624 Laws of Florida, 1931, is valid, and does not violate the due process clause and the equal protection of the laws clause of the 14th Amendment to the Federal Constitution, in the particulars severally complained of in said amended bill of complaint, and in the several petitions of intervention filed by the intervenors aforesaid.

Kay, Adams, Ragland & Kurz, Attorneys for Complainants and Intervenors.

Copy of the foregoing assignments of error received this 19 day of December, A. D., 1931.

H. E. Carter, Asst. Atty. Gen., of Counsel for Defendants.

On the 19th day of December, A. D. 1931, Complainants filed stipulation of counsel for preparation of transcript of record, same being in the words and figures following:

Stipulation omitted in printing.

[fol. 155] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 156 & 157] Minute entry of argument and submission, January 7, 1932, omitted in printing.

[fol. 158] IN SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1932, EN BANC

LOUIS K. LIGGETT COMPANY, a Corporation, et al., Appellants,

vs.

ERNEST AMOS, as Comptroller of the State of Florida, et al., Appellees

Leon County

An Appeal from the Circuit Court for Leon County, E. C. Love, Judge

Kay, Adams, Ragland & Kurz, for Appellants.

Cary D. Landis, Attorney General, and H. E. Carter, Assistant, for Appellees.

OPINION—Filed April 4, 1932

TERRELL, J.:

The Legislature of 1931 in Extraordinary Session enacted Chapter 15624, Laws of Florida, imposing licenses and fees for opening, operating, maintaining, or establishing stores in this State and to define the duties of the Comptroller and Tax Collectors of the several counties with reference thereto.

This suit was brought by appellants pursuant to Section Fourteen of the 1931 Chancery Act (Chapter 14658 Acts of 1931) to test the validity of Chapter 15624 generally referred to as the Chain Store Act. The chancellor below held the act valid as against the attack made on it and granted the defendant's motion to dismiss the bill of com-

plaint at the cost of the complainants. Appeal was taken from that decree.

[fol. 159] It is first contended that Chapter 15624 was enacted in violation of Section Eight of Article Four of the Constitution of Florida in that certain amendments thereto adopted in the Senate June 24, 1931, and in the House of Representatives June 19, 1931, constituted "legislative business" and were not adopted by a two-thirds vote, neither was the subject matter of said Act embraced within the Governor's proclamation of June 6, 1931 calling the Legislature in Extraordinary Session.

Section Eight of Article Four of the Constitution provides for calling the Legislature in Extraordinary Session and limits legislative business transacted at such sessions to that stated in the proclamation of the Governor calling the session or that called to the attention of the Legislature while in session or that initiated while in session by a vote of two-thirds of each house. We think the subject matter of Chapter 15624 was fully comprehended in the proclamation of the Governor calling the Legislature in Extraordinary Session but if it was not so comprehended the record discloses that both the House of Representatives and the Senate agreed by a two-thirds vote to receive and consider committee substitute for House Bill 8-X which was finally adopted and became Chapter 15624. The two-thirds vote required by Section Eight of Article Four applies only to the matter of taking up "legislative business" for consideration not embraced in the Governor's proclamation or called by him to their attention while in session. After agreeing by two-thirds vote to consider any "legislative business" it then takes the regular course under the rules and may be amended, adopted, or rejected by a majority vote. For all the record shows Chapter 15624 was adopted by a two-thirds vote.

It is next contended that Section Five of Chapter 15624 creates arbitrary and unreasonable discriminations between chain or multiple store retail merchants and single [fol. 160] store retail merchants engaged in the same class of business contrary to the equal protection and the due process clauses of the Federal Constitution and Sections One, Four, and Twelve of the Declaration of Rights, Constitution of Florida. This is the dominant question presented and the answer to it is decisive of the case.

Section Five Chapter 15624 is as follows:

"Section 5. Every person, firm, corporation, association or co-partnership opening, establishing, operating or maintaining one or more stores or mercantile establishments within this State, under the same general management, supervision or ownership, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act.

" 'The license fees herein prescribed shall be as follows:

" '(1) Upon one store, the annual license fee shall be Five Dollars for each such store.

" '(2) Upon two stores or more, but not exceeding fifteen stores, where the same are located in any one county, the annual license fee shall be Ten Dollars for each such additional store.

" '(3) Upon two stores or more, but not to exceed fifteen stores, where the same are located in different counties, the annual license fee shall be Fifteen Dollars for each such additional store.

" '(4) Upon each store in excess of fifteen, but not to exceed thirty, when all are located in any one county, the [fol. 161] annual license fee shall be Fifteen Dollars for each such additional store.

" '(5) Upon each store in excess of fifteen, but not to exceed thirty, where the same are located in different counties, the annual license fee shall be Twenty Dollars for each such additional store.

" '(6) Upon each store in excess of thirty, but not to exceed fifty, where all are located in any one county, the annual license fee shall be Twenty Dollars for each such additional store.

" '(7) Upon each store in excess of thirty, but not to exceed fifty, where the same are located in different counties, the annual license fee shall be Thirty Dollars for each such additional store.

"'(8) Upon each store in excess of fifty, but not to exceed seventy-five stores, where all are located in any one county, the annual license fee shall be Thirty Dollars for each such additional store.

"'(9) Upon each store in excess of fifty, but not to exceed seventy-five, where the same are located in different counties, the annual license fee shall by Forty Dollars for each such additional store.

"'(10) Upon each store in excess of seventy-five, where all are located in any one county, the annual license fee shall be Forty Dollars for each such additional store.

"'(11) Upon each store in excess of seventy-five, where [fol. 162] the same are located in different counties, the annual license fee shall be Fifty Dollars for each such additional store.

"'In addition to the above amounts, Three Dollars for each and every One Thousand Dollars of value of stock carried in each store for sale in such store.'"

As a prelude to the exegesis which follows we may say that remarkably few cases have made their appearance in this Court so thoroughly prepared and presented. Counsel for Appellants have supported their cause by many publications from the pens of some of the outstanding specialists in this country. These publications are devoted exclusively to the origin, history, economic, and social development of the chain store business and while they do not treat the legal aspect of the case with which we are here confronted they throw much light on it. We had conceived the chain store as a product of our industrial era but by a well established chronology its roots sink much deeper in our history, so deep in fact that it is coeval with the discovery of America, and it may be entirely possible that Columbus provisioned the Pinta, the Nina, and the Santa Maria from a chain store when he set out on his famous voyage in 1492.

This Court has repeatedly held that to construe or test the validity of a legislative enactment, resort may be made to the history of the legislation, the contemporary conditions, political, industrial, and social of the community at whose suggestion the statute was promulgated and that it

may be compared with cognate laws to determine its meaning and effect. Lee vs. Clearwater Growers Association 93 Fla. 214, 11 So. 722; Amos vs. Matthews 99 Fla. 1, 126 So. 308; Jerome H. Sheip Co. vs. Amos 100 Fla. 863, 130 [fol. 163] So. 699; Gray vs. Central Florida Lumber Co. decided by this Court March 15, 1932.

The term "due process of law," or "law of the land", as written in Magna Carta, was engrafted on the Federal and State Constitutions from the Petition of Right where it appears to have been first used, though it has the same meaning regardless of the form in which used. As applied to life, liberty, or property, due process of law is a fundamental, personal, Constitutional guaranty and as against the United States it is provided by the Fifth and Fourteenth Amendments. As against the States, it is provided by the Fourteenth Amendment and as against the State of Florida, it is provided by Sections Four and Twelve of the Declaration of Rights. The language of the Fifth and Fourteenth Amendments as to due process is identical yet they were engrafted on the Constitution under very different circumstances. We do not discuss these circumstances here except to say that while the Fifth Amendment as a restraint on the Federal government preceded the Fourteenth by most one hundred years, it was rarely invoked while as soon as the restrain- against the states was provided in the Fourteenth Amendment, the dockets of the courts were crowded with cases affecting it. Courts have generally proceeded on the assumption that the legal import of the phrase was the same in both Amendments yet it is admitted that circumstances might arise in which a different construction and application of their provisions would be proper. French vs. Barber Asphalt Paving Co. 181 U. S. 324, 328, 21 Sup. Ct. Rep. 625, 45 L. Ed. 879. See also Slaughter House Cases 16 Wall (U. S.) 36, 21 L. Ed. 394.

The Supreme Court of the United States has consistently declined to attempt a precise definition of "due process of law", Davidson vs. New Orleans, 96 U. S. 97, 101, 24 L. Ed. 616, but has frequently commended this Constitutional guaranty, Holden vs. Hardy, 169 U. S. 366, 389, 18 Sup. Ct. [fol. 164] Rep. 383, 42 L. E. 780, Yick Wo vs. Hopkins, 118 U. S. 356, 6 Sup. Ct. Rep. 1064, 30 L. Ed. 220; Bank of

Columbia vs. Okely, 4 Wheat. (U. S.) 235, 244, 4 L. Ed. 559. Its meaning is discussed generally in Kennard vs. Louisiana, 92 U. S. 480, 23 L. Ed. 478; Davidson vs. New Orleans, 96 U. S. 97, 24 L. Ed. 616; Ex Parte Wall 107 U. S. 265, 2 Sup. Ct. Rep. 569, 27 L. Ed. 552; Hagar vs. Reclamation Dist. No. 108, 111 U. S. 701, 4 Sup. Ct. Rep. 663, 28 L. Ed. 569; Missouri Pac. Ry. Co. vs. Humes, 115 U. S. 512, 6 Sup. Ct. Rep. 110, 29 L. Ed. 463; Freeland vs. Williams, 131 U. S. 405, 9 Sup. Ct. Rep. 763, 33 L. Ed. 193; Hallinger vs. Davis, 146 U. S. 314, 13 Sup. Ct. Rep. 105, 36 L. Ed. 986.

As applied to crimes, life or liberty being involved; "due process of law" requires that all persons so charged be tried in a court of justice acording to the rules and regulations provided by law for its orderly administration. When orderly administration is supplanted by arbitrary, unreasonable or unwarranted exercise of governmental power "due process of law" is denied. As applied to property, "due process of law" presents a more complex question. For this reason on pain of failure to be sufficiently comprehensive and prespicuous, state and federal courts have generally determined the application of the principle by judicial inclusion and exclusion as the case arises and have made no attempt at a comprehensive definition to fit every case. Due process of law is in its final analysis a judicial question and whenever invoked requires opportunity for hearing and defense in proceedings appropriate to the case and just to the parties affected. It must be pursued in an orderly manner in proceedings adopted to the end to be attained. It implies conformity with the natural and in- [fol. 165] herent principles of justice for the protection of individual rights, forbids the taking of one's property without compensation and requires that no one be condemned in person or property without opportunity to be heard. Holden vs. Hardy 169 U. S. 366, 18 Sup. Ct. Rep. 383, 42 L. Ed. 780. As applied in the Dartmouth College Case (4 Wheat. (U. S.) 518, 4 L. Ed. 629) Mr. Webster defined it as the law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial. The meaning of all this is that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society in our democracy.

The "equal protection of the laws", like "due process of law", as applied to life, liberty, and property is likewise a fundamental, personal, Constitutional guaranty, and as against the States and the United States is provided by the Fourteenth Amendment. As against the State of Florida, it is secured by Sections One and Four of the Declaration of Rights. Both rights are ultimately of judicial determination and are frequently treated together

The equal protection clause, like the due process clause, is generally not susceptible of exact delimitation. It is also said by some courts that no definite rule in respect of either, which will automatically solve the question in specific instances, can be formulated. Certain general principles, however, have been established, in the light of which the cases as they arise are to be considered and determined. It has been said generally that "equal protection of the law" means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes of persons in the same place and in like circumstances. Connolly vs. Union Sewer Pipe [fol. 166] Co. 184 U. S. 540, 558, 22 Sup. Ct. Rep. 431, 46 L. Ed. 679; Bowman vs. Lewis 101 U. S. 22, 25 L. Ed. 989; Kentucky Railroad Tax Cases 115 U. S. 321, 6 Sup. Ct. Rep. 57, 29 L. Ed. 414; Magoun vs. Illinois Trust and Savings Bank 170 U. S. 283, 293, 18 Sup. Ct. Rep. 594, 42 L. Ed. 1037.

Prior to the adoption of the Fourteenth Amendment, the law of the states in terms insured equal protection to all persons. The Fourteenth Amendment conferred no new or additional right but merely extended the protection of the Federal Constitution over the right to life, liberty, and property that previously existed under all State Constitutions. The right so extended is secured to all persons whether citizens or not and that which constitutes denial of equal protection will depend largely on what protection has been extended or what rights have been conferred under the Constitution and laws of the particular state in which the question arises. The rule that each case must rest on its own facts is particularly applicable to this class of cases. Nashville C. & St. L. Ry. vs. Taylor 86 Fed. 168, text 185.

The prohibition against the denial of equal protection "was not intended to compel the state to adopt an iron rule

of equal taxation" nor "to prevent a state from adjusting its system of taxation in all proper and reasonable ways". Bell's Gap R. Co. vs. Pennsylvania 134 U. S. 232, 10 Sup. Ct. Rep. 533, 33 L. Ed. 892. Neither does it prevent the states from distinguishing, selecting, and classifying objects of legislation within a wide range of discretion, provided only that the discretion must be based on some reasonable ground. If the statute or classification is applicable to all persons under like circumstances and subjects no one [fol. 167] to arbitrary exercise of power or if it operates alike on all persons similarly situated, it is sufficient. Tinsley vs. Anderson 171 U. S. 101, 18 Sup. Ct. Rep. 805, 43 L. Ed. 91; Walston vs. Nevin 128 U. S. 578, 9 Sup. Ct. Rep. 192, 32 L. Ed. 544. The classification may be limited as to objects or territory if all persons subject to it are treated alike under like circumstances and conditions. Hayes vs. Missouri 120 U. S. 68, 7 Sup. Ct. Rep. 350, 30 L. Ed. 578; Giles v. Teasley 193 U. S. 146, 24 Sup. Ct. Rep. 359, 48 L. Ed. 655; Toyota vs. Territory of Hawaii 226 U. S. 184, 33 Sup. Ct. Rep. 47, 57 L. Ed. 180.

"Classification must have relation to the purpose of the legislature, but logical appropriateness of the inclusion or exclusion of objects or persons is not required. A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion even though it result in ill advised, unequal, and oppres-ive legislation"; Heath & Milligan M*g*f. Co. vs. Worst 207 U. S. 338, 28 Sup. Ct. Rep. 114, 52 L. Ed. 236; Mobile County vs. Kimball 102 U. S. 691, 26 L. Ed. 238.

The Supreme Court of Pennsylvania has held that whether a classification under a statute is a denial of equal protection of the laws is a legislative question, subject to judicial revision only so far as to see that it is founded on real distinctions in the subjects classified, and not on artificial or irrational ones used for the purpose of evading the Constitutional prohibition. If the distinctions are genuine, the courts cannot declare them void, though they may not consider them made on a sound basis. The test is not wisdom but good faith in the classification. Seabolt vs. Commissioners of Northumberland *Company* 187 Pa. St. 318, 41 Atl. 22; Commonwealth vs. Randall 225 Pa. 197, 73 Atl. 1109.

[fol. 168] In the imposition of an excise tax, the rule of equality and uniformity as guaranteed by Article Nine of the Constitution is not involved. Excise taxes have been imposed in many ways but so long as they are reasonable, not unjustly discriminatory, nor arbitrary, whimsical, irrational, grossly oppressive, plainly unequal or contrary to common right, they will be upheld. State ex rel. Bonsteel vs. Allen 83 Fla. 214, 91 So. 104; Jackson vs. Neff 64 Fla. 326, 60 So. 350; Peninsula Casualty Co. vs. State 68 Fla. 411, 67 So. 165; Amos vs. Gunn 84 Fla. 285, 94 So. 615; Amos vs. Matthews 99 Fla. 1, 126 So. 308; Jerome H. Sheip Co. vs. Amos 100 Fla. 863, 130 So. 699.

Perfect equality in the operation of laws imposing a tax on real estate is recognized as impossible. It is even more difficult to arrive at uniformity in the operation of an excise tax, but mere inequality or lack of uniformity in its operation is no bar to its enforcement. It must be so arbitrary and oppres-ive as to clearly amount to a denial of due process or of equal protection and where, as here, the public health and safety are not involved, the ultimate test is whether or not the excise so imposed is so arbitrary and oppressive as to prohibit a great number, if not all persons from pursuing occupations otherwise lawful. Jerome H. Sheip Co. vs. Amos, supra; American Uniform Co. vs. Commonwealth 237 Mass. 42, 129 N. E. 622.

It is generally recognized that in the application of an excise tax, some objects of taxation will bear the burden while others will be relieved of it, one business will be selected while another will be omitted and one class of property will be taxed while another will go tax free. This fact, however, or the fact that it bears more heavily on one person or corporation than on an-ther, does not vitiate the ex-[fol. 169] cise. Clay Products Co. vs. United States 52 Fed. (2nd) 1033.

The rule is thus recognized in this State that the judiciary cannot nor will it attempt to prescribe to the Legislature limitations on its power and while there is no express limitation on the power of the Legislature to provide an excise or tax on licenses, nevertheless, the organic requirements of due process and equal protection must be observed in imposing such a tax. Roach vs. Ephren 82 Fla. 523, 90 So.

609; State ex rel. Bonsteel vs. Allen 83 Fla. 214, 91 So. 104, 26 A. L. R. 735; Hyers vs. Mitchell 95 Fla. 345, 116 So. 81; Jackson vs. Neff 64 Fla. 326, 60 So. 350; Jerome H. Sheip Co. vs. Amos 100 Fla. 865, 130 So. 699; Gray vs. Central Fla. Lumber Company, supra.

An examination of the Federal and Florida cases on this point discloses that the Federal rule governing the imposition of excises is more liberal than the rule in this state. Here, we require the observance of due process and equal protection in the imposition of such taxes while the Federal Courts hold that the reasonableness of an excise imposed for revenue purposes is a legislative prerogative that will not be inquired into by the courts either as to the amount of the tax or the property on which it is imposed. It makes no difference if the tax in practical effect operates to suppress the business taxed, that fact alone will not render an act of Congress unconstitutional. Hiers vs. Mitchell, supra; Jerome H. Sheip Co. vs. Amos, supra, both citing Federal cases supporting this rule. Others are cited in this opinion.

The second net result extracted from these opinions is that as to equal protection, the decisions of the Florida and Federal Courts are in harmony. In other words, there is no such thing as degree when we come to the admeasure-[fol. 170] ment of equal protection while as to due process, the Federal rule is much more liberal than the state rule, due largely to the weight attached to the determination of that question by the legislative body.

But Appellants contend that in consideration of the factual situation in this case, due process and equal protection are denied them in that Subsections One, Two, Four, Six, Eight, and Ten of Section Five of Chapter 15624 as above quoted, create arbitrary and unreasonable discriminations between single store retail merchants and chain or multiple store retail merchants.

The answer to this contention turns on whether or not the classification of retail stores for purposes of taxation under Subsections One, Two, Four, Six, Eight, and Ten of Section Five, Chapter 15624, is reasonable, not arbitrary or capricious and rests upon some reasonable distinction in the subjects classified. In the nature of things, there cannot be an exact inclusion and exclusion of the persons or things classified. Ozan Lumber Co. vs. Union County Nat.

Bank of Liberty 207 U. S. 251, 28 Sup. Ct. Rep. 89, 52 L. Ed. 195.

The Subsections of Section Five as enumerated first lay an annual license tax on retail stores, increasing progressively with the number of stores under the same general management and located in a single county. The act in other words classifies or points out the chain store and imposes a different measure of taxation on it for the privileges of doing business from that imposed on stores owned and operated as individual units. Appellants say that there is [fol. 171] no substantial difference between the business done and the manner of operating the chain store and the individual unit that would justify the classification on the basis of which the additional tax is imposed.

The record discloses material points of difference between chain stores and independently owned units. Such differences consist in the method of management, group control of store operation, frequent turnover, cooperative advertising, cooperative buying, suitable location, display of goods, training of employees, the combination of wholesale and retail functions under one control, and serving the public in the manner the public desires to be served. These differences were ample basis for the classification complained of.

Appellants assert that like advantages are available to independent stores and when properly applied will produce the same or similar results. This assertion may be true in part but in the nature of things it cannot be true as a whole. It is common knowledge that the chain store possesses many distinguishing features that give it an advantage over the independent store dealing in the same commodities. Its method of integration for purposes of cooperative buying, community advertising, traffic in "selling talk", displaying, serving the public, unqualified control of wholesaling and retailing, and commanding capital could, under no circumstances become available to the independent store with such results as flow therefrom to the chain store.

This phase of the question is conclusively settled against the contention of Appellants by the Supreme Court of the [fol. 172] United States in State Board of Tax Commissioners vs. Jackson 283 U. S. 527, 51 Sup. Ct. Rep. 540,

75 L. Ed. 1248. Speaking through Mr. Justice Roberts, that Court said:

"The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the laws does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings, or occupations, Bell's Gap. R. Co. vs. Pennsylvania 134 U. S. 232, 33 L. Ed. 892, 10 S. Ct. 533; Southwestern Oil Co. vs. Texas, 217 U. S. 114, 54 L. Ed. 688, 30 S. Ct. 496; Bron-Forman Co. vs. Kentucky, 217 U. S. 563, 54 L. Ed. 883, 30 S. Ct. 578. The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction, American Sugar Ref. Co. vs. Louisiana 179 U. S. 89, 45 L. Ed. 102, 21 S. Ct. 43, or if any state of facts reasonably can be conceived to sustain it. Rast vs. Dan Deman & L. Co. 240 U. S. 342, 60 L. Ed. 679, L. R. A. 1917A, 421, 36 S. Ct. 370, Ann. Cas. 1917B, 455; Quong Wing vs. Kirkendall 223 U. S. 59, 56 L. Ed. 350, 32 S. Ct. 192. As was said in Brown-Forman Co. vs. Kentucky, supra. * * *"

State Board of Tax Commissioners vs. Jackson, just [fol. 173] quoted from, is known as the Indiana Chain Store Case. The Indiana Act upheld in that case was different in some respects from the Florida Act involved in this case but these differences were not material to a disposition of the point under review. The Indiana Act applies to wholesale and retail stores, the Florida Act applies only to retail stores, the Indiana Act imposes a license fee of from three to twenty-five dollars, the Florida Act imposes a license fee of from five to fifty dollars when the stores are located in a single county and fifteen to fifty dollars when located in different counties, the Indiana Act graduates the license tax on the basis of the number of stores located in the state under a single management while the Florida Act graduates the license tax, first, on the basis of the number of stores located in a single county under a single management, and second, on the basis of the

number of stores located in different counties under a single management.

As a second phase to this question, Appellants contend that in consideration of the factual situation in this case, the provisions of Subsections Three, Five, Seven, Nine, and Eleven of Section Five of the Florida Act imposing a greater burden on retail merchants doing business in different counties under the same management than that imposed on retail merchants doing business in a single county under the same management is an arbitrary and an unreasonable discrimination.

It may be admitted that this question was not directly before the Court in the Indiana Case, however, what we have said in this opinion on the subject of classification is [fol. 174] applicable to the latter contention. It may be said further that nothing less than an arbitrary exercise of power can be stricken down under the Fourteenth Amendment. Judicial interference cannot be predicated solely on unjust and oppressive legislation, neither can invalidity stand on the mere fact that the act appears faulty. Metropolis Theatre Co. vs. City of Chicago 228 U. S. 61, 33 Sup. Ct. Rep. 441, 57 L. Ed. 730.

In Toyota vs. Territory of Hawaii 226 U. S. 184, 33 Sup. Ct. Rep. 47, 57 L. Ed. 180, the Supreme Court upheld a statute of Hawaii imposing a license tax of six hundred dollars on auctioneers in the district of Honolulu and a like tax of fifteen dollars on auctioneers in each other taxing district in the island. The act was assaulted on the ground that it deprived an auctioneer in Honolulu of -is property without due process of law and denied him the -qual protection of the law. The opinion in this case was written by the present Chief Justice before his retirement from that Court.

In Pacific American Fisheries vs. Territory of Alaska 269 U. S. 269, 46 Sup. Ct. Rep. 110, 70 L. Ed. 270, an act of the Territory of Alaska was upheld which imposed a surtax on an upward graduated scale per case of certain types of canned fish. It was there contended that the act discriminated against large canneries in favor of small ones but the act was upheld on the theory that classification for taxes on the basis of the amount of the corpus taxed had frequently been approved.

In Hayes vs. Missouri 120 U. S. 68, 7 Sup. Ct. Rep. 350, [fol. 175] 30 L. Ed. 578, a statute of the State of Missouri was upheld which provided that in the trial of Capital cases, in cities having a population of over 100,000 inhabitants, the state should be allowed fifteen peremptory challenges to jurors, while elsewhere in the state it was allowed only eight peremptory challenges in such cases. It was contended that the act denied to one accused of murder in a city of more than 100,000 the equal protection of the law.

In Metropolis Theatre Co. vs. City of Chicago 228 U. S. 61, 33 Sup. Ct. Rep. 441, 57 L. Ed. 730, an ordinance of the City of Chicago was upheld which imposed a license tax on places of amusement, graduated according to the price of admission for single seats. If the price of admission was one dollar, the license tax was one thousand dollars. If the price of admission exceeded fifty cents but was less than one dollar the license tax was four hundred dollars. The classification was sustained in the face of a showing that some theatres charging the higher admission received less revenue than those charging the lower admission.

The foregoing including the following cases on the question of classification might be enlarged ad infinitum. In addition to supporting the law of this case they demonstrate the utter impossibility of casting a taxing statute under our social structure that does not contain some inequalities and work hardships in individual cases. And while it has been repeatedly pronounced that there is no [fol. 176] limit to the discretion of the Legislature in classifying trades, occupations, and businesses for purposes of taxation so long as the classification rests on reason and is not arbitra-y or capricious, caution should be exercised in all instances to reduce hardships and inequalities to the irreducible minimum. Clark vs. City of Titusville 184 U. S. 329, 22 Sup. Ct. Rep. 382, 46 L. Ed. 569; Central Lumber Co. vs. State of South Dakota 226 U. S. 157, 33 Sup. Ct. Rep. 661, 57 L. Ed. 164; Quong Wing vs. Kirkendall 223 U. S. 59, 32 Sup. Ct. Rep. 192 56 L. Ed. 350; Southwestern Oil Co. vs. State of Texas 217 U. S. 114, 30 Sup. Ct. Rep. 496, 54 L. Ed. 688, Armour & Co. v. Commonwealth of Virginia 246 U. S. 1, 38 Sup. Ct. Rep. 267, 62 L. Ed. 547; Alaska Fish Salting & By-Products Co. vs. Smith 255 U. S. 44, 41 Sup. Ct. Rep. 219, 65 L. Ed. 489; Ohio Oil Co. vs.

Conway 281 U. S. 146, 50 Sup. Ct. Rep. 310, 74 L. Ed. 775; Great Atlantic and Pacific Tea Co. et al. vs. Maxwell, decided October 26, 1931, cited in Sup. Ct. Rep. November 15, 1931; Reyman Brewing Co. vs. Vrister, 179 U. S. 445, 21 Sup. Ct. Rep. 201, 45 L. Ed. 269; Peninsular Industrial Ins. Co. vs. State 61 Fla. 376, 55 So. 398; Lindsley vs. Natural Carbonic Gas Co. 220 U. S. 61, 31 Sup. Ct. Rep. 337, 55 L. Ed. 369.

We think that in either event the classification complained of may be held to withstand the challenge directed against it. We see nothing in the factual situation to differentiate this aspect of the case from State Board of Tax Commissioners vs. Jackson, supra, neither do we see any thing in the classification either as to stores under the same management in a single county or under the same management in different counties that would do violence to the rule [fol. 177] of due process or equal protection as announced in the decisions of this Court. Owners of chain stores are classified on two bases and all in each class are treated alike. If located in different counties the necessary implication of larger volume wider circulation, growing profits, business expansion and larger opportunity under group control must follow. These facts are ample to support that classification.

As a third phase to the main question Appellants contend that the ultimate purpose and effect of Chapter 15624 is to throttle competition, repress the diligent in business, and to impose a burden on superior skill, initiative, and industry, contrary to the American idea of inalienable rights as expressed in the Declaration of Independence and the Declaration of Rights.

Primarily this contention presents a question of economics or policy rather than one of law. The policy and expediency of an excise tax is always a question for legislative determination. The objects on which it is imposed, the amount of the tax, and the standard employed to measure the tax are matters in which legislative discretion may take a wide range. The judiciary is not authorized to revise the judgment of the Legislature on these matters even though it impose a burden on superior skill initiative, and industry unless that burden is shown to be unequal, grossly oppressive, or offends against every impulse of common right and justice.

We know of no reason nor do Appellants cite any for relieving superior skill, initiative, and industry from the payment of a tax. The sole justification for any form of taxation is to support the institutions of government. Our [fol. 178] taxing laws, organic and statutory, were cast to meet the needs of an agricultural country when practically all of our values were in land. If they cannot be construed and recast to meet the needs of this industrial era when the major portion of our values are represented by personal property then the burden of government is inequitably distributed and equal protection as contemplated by the constitution is defeated.

It is next contended that the proviso of Section Eight of Chapter 15624 exempting filling stations engaged exclusively in the sale of gasoline and other petroleum products creates an arbitrary and unreasonable discrimination against all owners of retail stores contrary to due process and equal protection.

The proviso to Section Eight applies only to filling stations engaged exclusively in the sale of gasoline and other products of petroleum. Exclusive of other considerations there is ample ground for the exemption of filling stations from the provisions of the act. They are inherently different from ordinary retail stores and a heavy excise tax is collected from gasoline and other petroleum products sold by them (Chapter 15659 Acts of 1931, Laws of Florida). If a retail store as contemplated by Chapter 15624 was operated in connection with the filling station, it would be subject to the tax imposed. Such a classification or distinction is far from being palpably arbitrary and the rule is that it must be upheld if there be any conceivable state of facts on which it can rest. Southern Grocery Stores [fol. 179] Inc. vs. South Carolina Tax Commission United States District Court, Eastern District of South Carolina, decided February 2, 1932, opinion by Judge John J. Parker is conclusive of this point. See also Rast vs. Van Deman & Lewis Co., 240 U. S. 342, 36 Sup. Ct. Rep. 370, 60 L. Ed. 679, L. R. A. 1917A 421; Ann. Cas. 1917B, 455; Wampler v. Cecompte, 282 U. S. 172, 51 Sup. Ct. Rep. 92, 75 L. Ed. 276; South Carolina Power Co. vs. South Carolina Tax Commission, 52 Fed. (2nd) 515.

Other alleged invalidities interposed by Appellants relat-s to the exemption of wholesale merchants, the penalty

of twenty-five per cent of the license tax imposed when renewals for licenses are not made on or before the tenth day of November of each year, the administration of the act and burden on interstate commerce.

We have examined each of these questions and find them to be without merit. The license year under the Act runs from October first to October first of each year. No license lapses prior to October 31, all licensees who have not renewed a/e then notified by registered mail and are required to renew on or before November 10, or suffer the twenty-five per cent added to the amount of their license fee as penalty for not complying promptly. Identical or similar provisions are carried in most State and Federal revenue acts and have been often upheld.

The decree of the Chancellor is accordingly affirmed.

Affirmed.

Buford, C. J., and Whitfield and Davis, JJ., concur.

Ellis and Brown, JJ., dissent.

[fol. 180] IN SUPREME COURT OF FLORIDA

CONCURRING OPINION

Davis, J. (concurring):

I concur in the opinion and judgment, but deem it of importance to point out that one proposition was argued by appellants which is not discussed in the very able opinion prepared by Mr. Justice Terrell to express the views of a majority of the Court covering the constitutional propositions decided.

Appellants argue that the Comptroller's administration of the Act is arbitrary and unreasonable, in that the Comptroller, under the advice of the Attorney General, has announced that the provisions of the Act will not be enforced against certain persons firms and corporations which appellants say are as much subject to the Act as they are, but are being exempted from the burdens thereof, by unlawful and unjustified administrative rulings.

Assuming, but not deciding, that all these complaints are true, and that the Act is in fact being so unjustifiably enforced as to deny to appellants the equal protection of the

laws by reason of its administration, appellants have a plain, complete and adequate remedy at law to coerce the non discriminatory administration of the Act by mandamus against the tax officers to compel them to apply the provisions of the statute to all who are legally subject thereto. See State ex rel Dofnos Corporation vs. Lehman, 100 Fla. 1401, 131 Sou. Rep. 33, 3rd headnote.

To enjoin the enforcement of the Act against appellants, because others than appellants are unjustly and unlawfully escaping from the tax the Act imposes, would be to increase, [fol. 180½] not diminish, the denial of the equal protection of the laws complained of, by adding to the class of those already unlawfully exempted by administrative rulings, an additional class consisting of appellants.

Two wrongs do not make a right. Neither does the fact that tax officers commit a wrong in favor of one, entitle another to the privilege of that same wrong in his favor.

All citizens and taxpayers are entitled to a fair, impartial, just and equal administration of the revenue laws, which right, as this Court has pointed out, may be enforced by mandamus against officials who would try to do otherwise. The remedy for unequal administration is therefore not by injunction to cripple enforcement, but by mandamus to strengthen it.

Whitfield and Terrell, JJ., concur.

[fol. 180a] In Supreme Court of Florida, January Term, A. D. 1932, en Banc

[Title omitted]

Statement of Facts

This appeal is taken from an interlocutory order granting the motion of appellees to dismiss the amended bill brought by the appellants to enjoin the enforcement of Chapter 15624 of the Laws of Florida adopted in 1931, on the ground of the alleged unconstitutionality of said act.

Section 5 of the act reads:

"Section 5. Every person, firm, corporation, association or co-partnership opening, establishing, operating or main-

taining one or more stores or mercantile establishments within this State, under the same general management, supervision or ownership shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act.

[fol. 180b] The license fees herein prescribed shall be as follows:

(1) Upon one store, the annual license fee shall be Five Dollars for each such store.

(2) Upon two stores or more, but not exceeding fifteen stores, where the same are located in any one county, the annual license fee shall be Ten Dollars for each such additional store.

(3) Upon two stores or more, but not to exceed fifteen stores, where the same are located in different counties, the annual license fee shall be Fifteen Dollars for each such additional store.

(4) Upon each store in excess of fifteen, but not to exceed thirty, when all are located in any one county, the annual license fee shall be Fifteen Dollars for each such additional store.

(5) Upon each store in excess of fifteen, but not to exceed thirty, where the same are located in different counties, the annual license fee shall be Twenty Dollars for each such additional store;

(6) Upon each store in excess of thirty, but not to exceed fifty, where all are located in any one county, the annual license fee shall be Twenty Dollars for each such additional store.

(7) Upon each store in excess of thirty, but not to exceed fifty, where the same are located in different counties, the annual license fee shall be Thirty Dollars for each such additional store.

(8) Upon each store in excess of fifty, but not to exceed seventy-five stores, where all are located in any one county, the annual license fee shall be Thirty Dollars for each such additional store.

(9) Upon each store in excess of fifty, but not to exceed seventy-five, where the same are located in different counties, the annual license fee shall be Forty Dollars for each such additional store.

(10) Upon each store in excess of seventy-five where all are located in any one county, the annual license fee shall be Forty Dollars for each such additional store.

[fol. 180c] (11) Upon each store in excess of seventy-five, where the same are located in different counties, the annual license fee shall be Fifty Dollars for each such additional store.

In addition to the above amounts, Three Dollars for each and every One Thousand Dollars of value of stock carried in each store or for sale in such store."

Section 11 of the act provides that:

Section 11. A county license tax of twenty-five per cent of the state license tax shall be levied and imposed upon each store as herein defined and each incorporated municipality of the State of Florida is authorized to levy a municipal license tax of twenty-five per cent of the state tax imposed by this Act, provided that the tax levied by or for the several counties and municipalities shall be graduated only on the number of stores situate in such county or municipality, respectively, notwithstanding the applicant may own other stores beyond the limits of such county or municipality, as the case may be. In all cases coming within this Section of this Act, where the license must be obtained from the Comptroller of the State of Florida, the county and municipal taxes shall be paid by the applicant to the Comptroller and immediately remitted to the proper officers of the several counties and municipalities of the State.

The plaintiffs, Louis K. Liggett Company, owning and operating 22 retail drug stores in various counties in Florida, Winn & Lovett Grocery Company, owning and operating 58 retail grocery stores in various counties in this State, and Paxson's Inc., owning and operating seven shoe stores in Florida and one in Georgia, all being corporations, [fol. 180d] bring this as a class suit, for the benefit of plaintiffs and all other merchants similarly situated who may desire to avail themselves of the benefits thereof. (See

section 14, Chancery Procedure Act of 1931.) The following parties filed petitions asking that they be allowed to intervene, on account of their interest in the subject matter, and, while setting up facts peculiar to their own situation, adopted the allegations of the bill attacking the constitutionality of the act: Independent Furniture Company; The Nunnally Company, G. R. Kinney Shoe Co., Southern Stores Corporation, South Florida Stores Corporation, Melville Shoe Corporation; J. C. Penney Company, F. W. Woolworth Company, Montgomery Ward & Company, the Great Atlantic & Pacific Tea Company and the United Cigar Stores Company, all owning and operating retail stores, situated at different points in Florida. Montgomery Ward Company allege that they operate only one store in Florida, but the other petitioners allege that they own and operate varying numbers of stores in this state, running from three to 226 stores each, most of them operating stores in more than one county. Several of these petitioners were by order of the court permitted to intervene.

This cause is now before this court on an application for a temporary restraining order, pending a determination of the appeal upon its merits, thereby involving the power of the court under sec. 5 of Art. V of the Constitution. Antuono v. City of Tampa, 87 Fla. 82, 99 So. 324. But the court sees fit to dispose of the appeal upon its merits, as has been done in a number of instances involving matters of public importance. Crawford v. Gilchrist, 64 Fla. 41, 69 So. 963; Carlton v. Mathews, 137, So. 815.

The act is first attacked upon the ground that the subject matter was not within the Governor's proclamation of June 6, 1931, calling the extra session during which this act was adopted. It is not contended that the act was not finally adopted by a "two-thirds vote of each house," as required by section 8 of Art. IV of the Constitution, but that certain [fol. 180e] amendments and the motion of concurrence in the House are not shown to have been adopted by a two-thirds vote. Whether this would or would not have been essential, if the act was outside the subjects named in the Governor's call, it is contended by appellees that the second subject dealt with in the Governor's proclamation, commencing with the words, "To provide new sources of revenue," is sufficiently broad to cover an act of this nature.

The ground of appellants' attack upon the constitutionality of the act which are most earnestly insisted upon in the arguments and briefs are briefly as follows:

1. That subsections 1, 2, 4, 6, 8 and 10 of section 5, as applied to the factual situation set forth in the amended bill and admitted by the motion to dismiss, create arbitrary and unreasonable discriminations between single store retail merchants and chain or multiple store retail merchants doing business in the same county, contrary to the "due process" and "equal protection of the laws" clause of the Fourteenth Amendment to the Federal Constitution, and the "equal civil rights" and "due process" clause of sections 1, 4 and 12 of the Declaration of Rights embraced in the Constitution of Florida.

2. That subsections 1 to 11 inclusive of section 5, as applied to the facts alleged in the bill, create arbitrary and unreasonable discriminations between retail merchants doing business in only one county, whether single store or multiple store merchants, and merchants such as plaintiffs doing business in different counties, contrary to the above designated constitutional provisions; and that section 11 of the act, undertaking to provide for county and municipal license taxes for retail merchants, is predicated upon the fees required by section 5, and is void for the same reasons.

3. That provisions of section 8, the last clause of section 5, and section 2 of said Act, exempting wholesale merchants (who remain subject to the license tax provided for by section 1197 Compiled General Laws), as applied to the "fac- [fol. 180f] tual situation" set up in the amended bill, creat- arbitrary and unreasonable discriminations against all chain or multiple retail merchants who own and operate warehouses, that stand in the same relation to their retail units as the wholesale merchant bears to single store retail merchants, contrary to the aforesaid provisions of the State and Federal Constitutions severally.

4. That the proviso contained in section 8 of said Act undertaking to exempt filling stations engaged exclusively in the sale of gasoline and other petroleum products, as applied to the "factual situation" set up in the amended bill, admitted by the motion to dismiss, creates an arbitrary and unreasonable classification and discrimination

against all other owners of retail "stores" as defined by said Act, contrary to the aforesaid provisions of the State and Federal Constitutions severally.

5. That on account of the invalidity of the several parts of said Act, as aforesaid, the elimination thereof would produce a result not intended by the legislature, and hence said Act must be declared void in its entirety.

6. That the Comptroller's attempted administration of the Act, as set forth in section 15 of the amended bill, undertaking to exempt furniture dealers, filling stations that sell tires and tubes, automobile dealers, cigar stores, restaurants, and sundry other classes of store operators, regardless of whether single store operators or chain store operators, creates arbitrary and unreasonable discriminations against the complainants and intervenors severally in this cause, contrary to the "due process" clauses and "equal protection of the laws" clauses of the State and Federal Constitutions severally as aforesaid.

The bill sets forth the origin and history of the development of the present day chain store or multiple store method of merchandising, which it alleges to be a natural and logical outgrowth of economic changes, especially those taking place since the World War, and charges that the act under review is a part of the World War, and [fol. 180g] charges that the act under review is a part of a widespread campaign to destroy chain store merchandising for the benefit of those merchants who refuse to adjust their businesses to conform to the changed economic conditions, and constitutes, under the guise of a revenue measure, an effort to destroy or arbitrarily burden a method of merchandising which has become an economic necessity, in order to eliminate waste and shorten the spread between the producer and the consumer, which it is alleged was pointed out by the Department of Commerce when the present President was at the head of that Department. That said Department stated that at that time about one-third of every American dollar spent in the stores of this country covered the actual cost of production, while the other two-thirds was absorbed in the process of distribution, whereas by a recent investigation by the Harvard Board of Business Research it has been found

that in the grocery field chain stores are able to operate on less than 20 per cent of the consumer's dollar, of which 1¾ per cent is net profit, leaving 80 per cent to go to the producer. Also, that similar changes have been accomplished in other fields by chain stores handling other classes of merchandise, thus going a long way towards eliminating the "tragic economic waste" of which Mr. Hoover spoke. That the policy so inaugurated had also been fostered by state governments, including Florida, by the enactment of the act of 1923 authorizing the formation of co-operative marketing associations, the declared policy of which was to eliminate speculation and waste between the producer and the consumer.

That under this Act, which became a law without the Governor's approval on July 3, 1931, Cohen Brothers, the largest department store in Jacksonville, covering a whole block, will only have to pay a license fee of $5.00, while complainant Winn & Lovett Grocery Co., would have to pay $40.00 per store on each of its 58 stores in excess of fifty stores, and lesser graduated amounts for each store [fol. 180h] below fifty; and Louis K. Liggett Company, on its 22 stores, $20.00 per store in excess of fifteen. That like arbitrary differences exist between the single store operator and Paxson's Inc., owning and operating seven shoe stores in different counties; which discriminations are based purely upon the number of roofs under which a merchant does business, and whether located in more than one county.

That George C. Blume owns and operates in Duval County thirty-seven grocery stores, known as "Whiddon's Stores", which are similar to and operated under the same circumstances and in the same manner as the twenty-three grocery stores in Duval County owned and operated by complainant, Winn & Lovett Grocery Company but that under the arbitrarily increased fee on stores operated in more than one county, embraced in the schedule set forth in section 5 of the Act, complainant is required to pay a State license fee averaging of $24.74 per store on each of its stores in Duval County, whereas the Whiddon Stores are only required to pay $13.78 per store on each of its stores located in the same county. That similar discriminations exist as against the other complainants, all of whom operate stores in more than one county, and that there is

no justification whatever for such discrimination, based as it is solely upon the fact that a merchant does business in more than one county in this State.

That said Louis K. Liggett Company operates its drug stores in several counties of Florida in the same way that other drug stores in the county are operated whether owned singly or otherwise. That the merchandise dispensed at the soda founts in such stores is very largely purchased locally, consisting of such items as mild, foodstuffs, ice cream, nuts, fruits, etc. That said company purchases cigars, cigarettes and tobacco from the manufacturer and shipments are made directly to the stores where needed, substantially in the same manner that those classes of goods are purchased and received by the owners of single drug stores. That some of the medical and toilet goods are purchased by the Company and collected in its principal [fol. 180i] warehouse in New York City, from which shipments in interstate commerce are made weekly or bimonthly on requisition by the individual stores located in Florida and other States. Such frequent shipments are necessary in order to permit more rapid turnovers, keep fresh goods in retail units and prevent the accumulation of old or shelf-worn stock. That the owner of a single drug store ordinarily buys his supply of medical and toilet goods from the manufacturers, jobbers or wholesalers and shipments are made either from some factory or from Florida wholesale warehouses. That no advantage results to said company by buying merchandise in large quantities and centralizing the same in a central warehouse, but the operation of such central warehouses involves the expense of the capital investment in such stock or merchandise, the interest, taxes and insurance thereon, investment in warehouse, and freight paid from the warehouse to the several stores. That none of these items of expense or burdens are borne by the owners of single drug stores who ordinarily purchase their merchandise locally from brokers or wholesalers. That none of the stores operated by this complainant increase the fire hazard or endanger the health or morals of the community or require increased or additional police protection different from the stores operated by other druggests doing a similar business. That the

twenty-two Liggett stores operated in Florida are burdened with State license fees in the aggregate amount of $355.00, whereas twenty-two individually owned drug stores competing with the Liggett stores are assessable with State license fees in the sum of only $110.00.

That complainant, Louis K. Liggett Company, has competition in Florida not only from individually owned drug stores, but also from a great number of drug stores individually owned but co-operatively affiliated with McKesson and Robbins Inc., wholesale dealers in drugs, toilet articles, and other goods, wares and merchandise, operating throughout the United States. That the drug stores so [fol. 180j] affiliated with McKesson and Robbins constitute what is commonly known as "voluntary chain" stores but which would be more properly designated as a "co-operative chain" store. That the aforesaid manufacturer-wholesaler-retailer combination in the production and distribution of drugs enables the individual single store owner affiliated therewith to sell at retail under the same terms and conditions as those established by chain store systems and department stores. That in such McKesson retail drug stores the consumer can find in almost any neighborhood in the United States drugs at the same prices and as extensively advertised as in chain drug stores. That McKesson and Robbins, Inc., have four wholesale distributing points in the State of Florida. That the wholesale distributor at the several points enters into contracts or arrangements with the owner- or operators of singly owned drug stores whereby such owners agree to purchase from such distributor in that locality in the State of Florida all of the drugs, toilet articles and other goods handled in drug stores or such of them as may be carried and sold by the distributing warehouse, in consideration of which the distributor of the McKesson system agrees to give to such drug store owner whatever benefits may arise from the volume resulting from his purchases and buying with the purchasers of all other retailers and drug store owners affiliated with said system, and also agrees and does furnish to each retail store owner the benefit of group advertising, including National Radio advertising and merchandising service supplied by and through said McKesson organization. That there are owned and operated in the City of Jacksonville, thirty-five individually owned drug stores affiliated with the

McKesson system, while at other points in the State of Florida there are numbers of stores thus affiliated, and that the total number of independent drug stores in the United States and elsewhere affiliated with said McKesson system is 57,000. That said McKesson retail stores are able to purchase merchandise substantially at the same price and on the same terms as your orator, and the total sales made by such stores in Florida amount to a great [fol. 180k] many times the total sales of the twenty-two stores operated by said Liggett Company, and enjoy all of the advantages accruing from quantity buying, and none of the disadvantages resulting from capital invested in quantity purchased, in warehouses, insurance, etc. Nevertheless, each of such individually owned drug stores affiliated with the McKesson system is required by said Act to pay a State license fee of only $5.00 each, whereas complainants stores must pay a State license of $16.00 each, thus imposing an arbitrary and oppressive burden of taxation upon complainant only because it owns and operates a number of stores under one ownership and management.

The bill also alleges the methods pursued by the Winn and Lovett Grocery Company in the operation of its fifty-eight grocery stores in various counties of the State, and alleges that they are operated in the same manner that similar grocery stores are operated by owners of only one such grocery store; and that the operation of such stores does not increase the fire hazard or endanger the health or morals of the community or require increased or additional police protection any more than stores individually owned. That there is very keen competition in the grocery business in Florida, although many chain grocery store owners operate in the State. That the "Better Food Stores" are a group of individually owned grocery stores affiliated with Lewis-Chitty Consolidated Grocery Co., which does a large wholesale grocery business in the City of Jacksonville, with branch wholesale houses at Orlando, Tampa, Cocoa, Miami and other points. That the name "Better Food Stores" is a trade name belonging to a corporation whose corporate name is "Better Food Stores Inc." That one of the organizers of said corporation is A. B. Chitty, the President and controlling stockholder of said Lewis-Chitty Consolidated Grocery Co. That the formation of such co-operative groups as said "Better Food Stores" has been encouraged

by the discrimination of said Act. That on June 18, 1931, another grocery corporation was organized under the name of "Florida Food Stores, Inc.," by certain individuals in [fol. 1801] the grocery business at Daytona Beach, Florida, and under that name a number of individually owned grocery stores have been affiliated for co-operative purchases in the same way as the aforesaid group operating under the name of "Better Food Stores". And in like manner other co-operative groups of independently owned grocery stores have been formed under trade names, or otherwise since the passage of said Act, being assured that they could so operate without being subjected to the discriminatory graduated license fees provided by the Act. That although the said "Better Food Stores" group were organized on June 8, 1931, about the time said Act was passed, or introduced into the legislature, the same has had a very rapid growth, there being forty-two individually owned grocery stores in the Duval County group, and other groups have been formed at several other points where the said Lewis-Chitty Company has branches of its wholesale grocery business. That by such affiliated and co-operative organizations single grocery stores owners have adopted the best feature of chain store merchandising and have secured substantially all the benefits derived therefrom, while at the same time they have avoided the burdens of capital investments, insurance, etc., incident to the carrying of a large stock in a central warehouse, such as is maintained by the Winn & Lovett Grocery Company in Jacksonville and Sanford. That the latter company also finds it necessary to maintain a force of employees and a fleet of trucks to deliver merchandise from its warehouse in Jacksonville to its retail units in Duval County and outlying towns, whereas the individually owned stores affiliated as "Better Food Stores" have no such expense and can obtain daily deliveries by motor trucks as needed from the Lewis-Chitty Consolidated Grocery Company with which they are under contract. That such co-operative groups are not local merely to Jacksonville and other parts of Florida, but such methods of co-operative merchandising prevail generally throughout the United States. That the largest organization of independently owned grocery stores in the United States is known as "The Independent Grocers Alliance", which organization now embraces thirty-eight [fol. 180-m] States, has one hundred and thirty jobbing or

supply depot centers and has affiliated with it 14,000 retail grocery stores, with a buying power of $500,000,000.00 per year. That the scheme of organization and affiliation of independent grocers alliance and the owner of individual grocery stores is very similar to the relation which exists between the memebers of said Better Food Stores and the Lewis-Chitty Consolidated Grocery Company or its intermediary, Better Food Stores, Inc. That the retail grocer affiliated with the independent grocers alliance pays $3.50 per week to the independent alliance jobber, who in turn furnishes the retailer with groceries at reduced prices, and also newspaper advertising, copy mats, display cards, price-posters, and various up-to-the-minute merchandising helps. That the newspaper advertising is placed by the I. G. A. wholesalers in his local paper, but the copy and layouts are furnished by the I. G. A. advertising counsel. That the I. G. A. advertising appears in 283 dailies and 454 weeklies, and calls for an annual expenditure of $757,000.00, in addition to which there is an annual expenditure of $250,000.00 for National magazine and Radio advertising. That there are in Florida, affiliated with the independent grocers alliance eighty-three retail grocery stores in Tampa, St. Petersburg, and on the West Coast of the Peninsula who get their supplies from Perkins and Sharpe, whose warehouse is situated in Tampa and who are the I. G. A. Jobbers in that territory. That there are many other voluntary chains or co-operative groups in the United States not only in the grocery business, but in other lines and independent store owners so operating have adopted the best features of modern merchandising promulgated by chain or multiple store operators, which features are set forth with some detail in the bill. That although members of such voluntary chains or co-operative groups are doing business in the same way, the Act under review undertakes to impose [fol. 180n] excessive burdens of State license taxes upon complainants and other chain store operators similarly situated, while not placing the same corresponding burdens upon members of said voluntary chains or co-operative groups. That the legislature knew that the independent grocers alliance was operating extensively in Florida before said Act was passed and also knew that complainants were also operating several drug, grocery and shoe stores

in Florida and had been for some years prior to the passage of said Act.

That complainant, Paxson's Inc., was organized in 1929 under the laws of the State of Florida, with a capital stock of $40,000.00, its stockholders and officers being residents of this State. That it owns and operates eight retail shoe stores, one in Georgia and seven in Florida, and conducts the business in its several stores in the same manner as other shoe stores are conducted in said several localities, attempting however, to give customers better service and better values for their money, which are mere matters of competitive merchandising equally available to all other shoe merchants, whether owning only one store or many stores. That they carry comparatively the same stock of goods in each of its stores and does not own or maintain any warehouses, but buys its goods direct from the factories situated in different parts of the United States from which factories shipments are made direct to each individual store. That it buys shoes on substantially the same terms as other shoe merchants doing business in different parts of the State, whether operating single stores or many stores. That in Jacksonville, where one of the stores is located, there are shoe businesses operated in more than one location, but in no other county, and that in Cohen's department store in Jacksonville there are several departments for different grades of shoes, combined stocks of which are greater in value than the combined value of all the stocks of complainants in its seven Florida shoe stores. That neverthe-
[fol. 180o] less, said large department store, including several shoe departments, will be assessed under the Act with a arbitrary license fee of only $5.00, whereas this complainant will be assessed with an arbitrary State license fee in the sum of $13.60 on each of the said shoe stores, in addition to which complainant will be required to pay $3.00 per thousand license tax on the value of its merchandise carried in its several stores plus a County license of 25 per cent of the State tax and plus a municipal license tax of another 25 per cent of the State tax. That there are several other singly owned shoe stores in the City of Jacksonville which each carry a larger stock and do a larger business than complainant in all of its three stores located in said City, yet said large single shoe stores are chargeable with annual State license fees of only $5.00

each as compared with an annual State license fee against each of complainant's stores of $13.60. The bill refers to the differences between chain stores and independently owned units catalogued by the majority opinion of the Supreme Court of the United States in the case of State Board of Tax Commissioners of Indiana v. Jackson, 283 U. S. 527, 75 L. ed., 1248, decided May 18, 1931, and alleges that regardless of what may or may not have been the then conditions of merchandising and methods used by chain store operators in the State of Indiana, such conditions and such differences do not prevail in Florida. Each one of the differences set forth in the majority opinion in the cited case is taken up in detail by the bill and facts alleged with reference to each, tending to show that such differences do not exist in this State.

The bill also alleges that the defendant, Hon. Earnest Amos, Comptroller is undertaking to administer said Chapter 15624 in a manner so as to create sundry exemptions and exceptions as to the merchants to whom it shall be applied; that the comptroller holds that wholesale grocery concerns are not covered by the new Act but continue subject to Section 1197 C. G. L. paying only $1.50 [fol. 180p] per thousand on its merchandise carried instead $3.00 per thousand as is charged to complainant Winn & Lovett Grocery Co. upon merchandise carried in its warehouses, pursuant to the new Act; that the comptroller construes said Chapter 15642 to be inapplicable to furniture dealers, regardless of whether they operate one retail store or many retail stores, on account of the fact that Section 1149 C. G. L. provides a special graduated license tax upon furniture dealers dependent upon capital stock invested in such business. That in like manner the comptroller and the several tax collectors of the State acting upon his instructions, with the advice of the Attorney General, undertake to exempt from the provisions of said new Act, not only filling stations engaged exclusively in selling petroleum products, but also to exempt filling stations selling those products plus tires and tubes, holding that Section 1061 C. G. L. provides a graduated tax for tire and tube dealers depending upon the population of the town or city where located. That an exemption is also made in behalf of automobile dealers, whether second-hand

or otherwise, because Section 1056 C. G. L. provides a graduated tax upon merchandise of that kind. That in like manner the comptroller is undertaking to exempt merchants dealing in cigars and tobacco who are taxed by Section 1120 C. G. L. Similar allegations are made with reference to hay, feed and grain dealers; restaurants and cafes, etc. That Chapter 15624 carries its own definition as to who shall be subject to the license taxes sought to be imposed thereby and repeals all laws and parts of laws in conflict therewith, and that if said Act is valid, the said exemptions sought to be allowed are unauthorized and would operate to deprive complainants of the equal protection of the law.

The bill also alleges that the Act operates to place an undue burden upon the interstate commerce business of complainants.

It is further alleged that the complainants have tendered and offered to pay the taxes lawfully assessable against [fols. 180q-s] them under the law existing prior to the passage of Chapter 15624 but that the tax collectors, acting under the advice of the comptroller declined to accept the same, and threatened to cause the complainants and their store managers to be prosecuted for doing business without license and to impose the 25% penalty provided in Section 4 of said Act. Wherefore, complainants pray that the court issue its writ of injunction restraining the defendants from attempting to enforce said Act of 1931 and from interferring with lawful procurement by complainant of the proper licenses under the prior law, until further order of this court, and that on final hearing such injunction may be made permanent.

The defendants filed a motion to dismiss the amended bill, which motion stated that Chap. 15624 was duly enacted; does not deny complainants equal protection of the laws; that the classification of stores made for taxation purposes by the Act is unreasonable and operates equally and uniformerly on all stores similarly situated. That the legislature has unlimited power and discretion in the matter of levying excise taxes, except that such taxes shall be geographically equal and uniform, and that the taxes imposed by the Act are geographically equal and uniform, and do not violate any provision of either the State or Federal Constitutions. The Circuit Court rendered an

order, after argument of the motion, denying the application for injunction and granting the motion to dismiss the bill, from which order this appeal was taken.

[fol. 181] DISSENTING OPINION

BROWN, J. (Dissenting):

In discussing the power of the legislature to classify persons and things, it was said by this Court, speaking through Mr. Chief Justice Taylor, in State vs. Jacksonville Terminal Co., 41 Fla. 363, 27 So. 221, said that the equal protection clause of the Fourteenth Amendment to the Federal Constitution "does not preclude legislation reasonably classifying persons and things, and that generally it only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. And the test of the reasonableness [fol. 182] of a classification is that 'it must be based upon some difference which bears a just and proper relation to the attempted classification, and is not a mere arbitrary selection.'" Citing Mahoun v. Illinois Trust & Savings Bank, 170 U. S. 283, 18 S. C. R. 594, and Dell v. Marvin, 41 Fla. 221, 26 So. 188. See also Stripling v. Thomas, 132 So. 824, S. A. L. Ry. Co. vs. Simon, 56 Fla. 545, 47 So. 1001.

This Court, speaking through Mr. Justice Strum, in Sheip Co. vs. Amos, 130 So. 699, said:

"The province of the judiciary in considering an objection of the nature thus stated, as applied to an excise, is limited. In the direct imposition of a state excise upon taxable privileges, the Legislature exercises a power of extensive scope. Organic requirements as to uniformity and valuation, applicable to ad valorem taxes, do not apply to excises, since the latter are not regarded as a "tax" within the meaning of constitutional limitations requiring uniformity of rates and just valuations. Jackson v. Neff, 64 Fla. 326, 60 So. 350; Hiers v. Mitchell, 95 Fla. 345, 116 So. 81. In the imposition of excises, the only organic limitations upon the State are that due process, equal protection, and contract rights shall not be burdened nor federal functions interfered with. Therefore there must be a rea-

sonable basis of classification, and there must be geographic, as distinguished from intrinsic, uniformity. Amos v. Matthews (Fla.) 126 So. 308; Amos v. Gunn, 84 Fla. [fol. 183] 285, 94 So. 615; Jackson v. Neff, supra; Peninsular Casualty Co. vs. State, 68 Fla. 411, 67 So. 165; Panhandle Oil Co. v. Mississippi, 277 U. S. 218, 48 S. Ct. 451, 72 L. Ed. 857, 56 A. L. R. 583. See also, Newell v. Green, 159 N. C. 462, 86 S. E. 291. Unless the classification, or the amount of the tax, is purely arbitrary and unreasonable under every conceivable condition in practical affairs, the courts will not interfere.

"It is held in the federal courts that the mere fact that an excise tax, imposed for revenue purposes, operates to practically suppress the business taxed, does not render an Act of Congress unconstitutional, and that it is not a part of the function of a court to inquire into the reasonableness of the excise, either as respects the amount, or the property upon which it is imposed."

"The rule in this state, however, is somewhat more stringent. This court fully recognizes the doctrine, long established, that the judicial department cannot prescribe to the legislative department limitations upon the exercise of its existing powers. That doctrine however, is consistent with the further doctrine adopted by this Court that, although there is no express limitations upon the power of the Legislature to provide for a tax on licenses, nevertheless the organic requirements of *due process* and *equal protection* must be observed in imposing such a tax. See Roach v. [fol. 184] Ephren, 82 Fla. 523, 90 So. 609.

"The rule in this jurisdiction was thus stated in State ex rel. Bonsteel v. Allen, 83 Fla. 214, 91 So. 104, 105, 26 A. L. R. 735:

"'While it is within the power of the courts to declare laws lev-ing license taxes void because of the unreasonable and arbitrary exercise of the state's power either in the classification or in fixing the amount of the license, such power will not be exercised unless the amount of the license tax is so great, or the classification so palpably arbitrary as to be beyond the necessities for the legislation, or equivalent to an impa*ri*ment of the constitutional rights or property, or tend to prevent a great number, if not all persons, from pursuing otherwise lawful occupations which do not impair public safety, public health, or destroy property.'"

The application of this clause of the Fourteenth Amendment to state taxation statutes is thus stated in the majority opinion by Mr. Justice Roberts, in the recent case of State Board of Tax Commissioners v. Jackson, 283 U. S. 527, 75 L. ed. 1464, 51 S. C. 540:

"The power of taxation is fundamental to the very existence of the government of the states. The restriction that it shall not be so exercised as to deny to any the equal protection of the law does not compel the adoption of an iron rule of equal taxation, nor prevent variety or differences in taxation, or discretion in the selection of subjects, or the classification for taxation of properties, businesses, trades, callings, [fol. 185] or occupations. Bell's Gap R. Co. v. Pennsylvania, 134 U. C. 232, 33 L. ed. 892, 10 S. Ct. 533; Southwestern Oil Co. v. Texas, 217 U. S. 114, 54 L. ed. 688, 30 S. Ct. 496; Brown-Forman Co. vs. Kentucky, 217 U. S. 563, 54 L. ed. 883, 30 S. Ct. 578. The fact that a statute discriminates in favor of a certain class does not make it arbitrary, if the discrimination is founded upon a reasonable distinction. American Sugar Ref. Co. vs. Louisiana, 179 U. S. 89, 45 L. ed. 102, 21 S. Ct. 43, or if any state of facts reasonably can be conceived to sustain it. Rast v. Van Deman & L. Co., 240 U. S. 342, 60 L. ed. 679, L. R. A. 1917A, 421, 36 S. Ct. 370, Ann. Cas. 1917B, 455; Qyong Wing v. Kirkendall, 223 U. C. 59, 56 L. ed. 350, 32 S. Ct. 192. As was said in Brown-Forman Co. v. Kentucky, supra:

'A very wide discretion must be conceded to the legislative power of the state in the classification of trades, callings, businesses or occupations which may be subjected to special forms of regulations or taxation through an excise or license tax. If the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.'

It is not the function of this court in cases like the present to consider the propriety or justness of the tax, to seek for the motives or to criticize the public policy which prompted [fol. 186] the adoption of the legislation. Our duty is to sustain the classification adopted by the legislature if there are substantial differences between the occupations separately classified. Such differences need not be great. The past decisions of the court make this abundantly clear."

In the opinion of the four dissenting Justices, as pertains to the general principle involved, it was said:

"It is settled that the power of the State to classify for purposes of taxation is of wide range and flexibility; but that, while the difference upon which the classification is bases need not be great, mere difference is not enough. Classification, to be legitimate, must rest on some ground of difference having a reasonable and just relation to the object of the legislation. All persons similarly circumstances must be treated alike. Louisville Gas & E. Co. vs. Coleman, 227 U. S. 32, 37, 72 L. ed. 770, 48 S. Ct. 423, and cases cited."

In the majority opinion, Mr. Justice Roberts said that the appellants had produced evidence to prove that there are many points of difference between chain stores and independently operated units, which justified the classification made by the Indiana Act, naming them. That these differences exist in Florida in so far as appellants' businesses are concerned, is denied by the bill in this case. Indeed, the existence of these differences in Indiana was doubted by the majority members of the Court. In commenting on this feature of the majority opinion, the dissenting opinion says:

"In the State of Indiana there are approximately 44,000 retail stores engaged in the same general lines of business, only eight per cent of which are so-called 'chain stores.' [fol. 187] Among them are single stores each of greater value than all the stores of appellee combined, and each doing a business in excess of all that done by appellee. For example, there are two large department stores in the City of Indianapolis, each doing a business of more than $8,000,000 per annum, one operating 124 separate departments and the other, 86 separate departments, but each pays a license fee under the statute of only $3.00 per annum; while appellee, owning 225 separate stores and doing a total business of approximately $1,000,000 per annum, pays license fees of $5,443 per annum—eighteen hundred times as much! Each of several owners of a large number of stores (145 in one instance), who happens to have only one store in Indiana, pays a license *fee* of $3, contrasted with the payment of $25 for each store over

twenty owned by appellee. Appellee, upon 205 of his stores, pays the aggregate sum of $5,125; while the proprietors of 205 stores, held and operated separately, pay in the aggregate only $615, although they or some of them may be of equal or greater value, equally well or better located, doing as much or more business, and producing as much or more income. The evidence further shows that a "cooperative volunteer chain" consisting of several hundred stores in Indiana paying an annual license fee of only $3 each, operates under an association called the Independent Grocer's Alliance. The association carries on co-operative buying and advertising for the benefit of the members of the group; and it seems clear that as to most, if not all, of the advan-[fol. 188] tages said to be enjoyed by the chain stores the volunteer co-operative group occupies a position of equality.

"These are obvious and flagrant discriminations which put upon the act the clear stamp of unconstitutionality, unless the differences relied upon are germane to, and reasonably sufficient in substance to sustain, the proposed imposition of license fees of such unequal amounts upon different persons following identical occupations.

"What, then, are the differences, or so called advantages, relied upon to justify the classification? They were, in their strongest aspect, stated by an expert witness called by the appellants in support of the act, as follows: The ability of the chain store to make large quantity purchases to pay cash and thus obtain the advantage of discounts; skill in buying so as to avoid either overstocking or understocking; warehousing in, and distribution from, a single warehouse for numerous stores; large capital with the advantages flowing therefrom; certain pricing and sales policies resulting in slightly lower prices on the part of the chain stores as compared with single stores; more rapid turn-over of goods; cheaper and better advertising; superior management; standardization in the matter of display; standardization of store management; and similar elements thought to have a beneficial effect upon the disposition of goods.

[fol. 189] "But the effect of this enumeration of supposed advantages is completely swept away by the testimony of the same witness on cross-examination, which stands upon the record, without dispute, that they are not confined to the chain stores, but are enjoyed as well by such of the

favored taxpayers as are engaged in large business, whether in a single establishment or in many establishments.

"Every advantage that I have spoken of as relating to the chain group is that which inheres, primarily, in volume and management without respect to whether it is involved in a chain group or in a single store. Good management makes for volume and volume makes for the possibility of making or acquiring more capital, and more capital makes for the possiblity of employing the highest grade of experts, so that there is a constant intercommunication of revolving. I would find the same advantage inhering in a large department store over a smaller one. Every quality that I have enumerated as going to the manner of organization relates itself, primarily, to their being a sufficient capital structure and volume of business to permit it to be carried on, and I would add management in that it is an essential part of it.

* * * * * * *

" 'Q. So that it does not relate itself to the form of organization—whether they are administering fifty or a hundred stores, or administering one store?

A. No, no.

Q. The fact that it is administering multiple owned stores has nothing to do with it, but it is the fact that it is administering a large business that develops the situation [fol. 190] that you have referred to?

A. That is true. But I might add that the management of a large number of stores may contribute to the more rapid increases in the size.

Q. That is true. But I might add that the management of a large number of stores may contribute to the more rapid increases in the size.

Q. Just as the management of a large unit store, with many departments, may develop the ability to strengthen and enlarge those departments?

A. Yes.

Q. And the problem would be identical, wouldn't it, in the case of Macy or Gimbel—or, taking it locally in connection with Ayres or Block?

A. Yes, I would say the problem would be the same. There is no difference in the functions that are performed here—the function of retailing.'

"It thus appears that the advantages attributed to the chain store lie not in the fact that it is one of a *number* of stores under the same management, supervision or ownership, but in the fact that it is one of the parts of a *large business*. In other words, the advantages relied upon arise from the aggregate size of the entire business, and not from the number of parts into which it is divided. For the want of a valid ground upon which to stand, therefore, the classication should fail, because it is made to depend not upon size or value or character, amount of capital invested or income received, but upon the mere circumstances—wholly [fol. 191] irrelevant so far as any of the advantages claimed are concerned—that the business of one is carried on under many roofs, and that of the other under one only. Reduced to this single detail in difference, what fairly conceivable reason is there in the policies or objects of *taxation* which gives countenance to the requirement that the former shall make an annual contribution to the revenues of the state eighteen hundred times as much as the latter? A classification comparable in principle would be to make the amount of an income tax depend upon the number of sources from which the income is derived, without regard to the character of the sources or the amount of the income itself.

"Since the supposed differences thus are reduced to the one of number only, and, since that turns out to be irrelevant and wholly without substance, it follows that the act is a 'clear and hostile discrimination' against a selected body of taxpayers, Bell's Cap R. Co. v. Pennsylvania, 134 U. S. 232, 237, 33 L. ed. 892, 895, 10 S. Ct. 533—a mere subterfuge by which the members of one group of taxpayers are unequally burdened for the benefit of the members of other groups similarly circumstanced. All of which is to say that the legislature has misapplied its powers to classify with the result of reaching an end forbidden by the [fol. 192] 14th Amendment.

"To this situation the language of Mr. Justice Field in Santa Clara County v. Southern P. R. Co. (C. C.) 9 Sawy. 165, 18 Fed. 385, 399, seems peculiarly applicable:

"'Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the Amendment. There undoubtedly are, and always will be, more or less inequalities in the operation of all general

legislation arising from the different conditions of persons from their means, business, or position in life, against which no foresight can guard. But this is a very different thing, both in purpose and effect, from a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing the result. Absolute equality may not be attainable, but gross and designed departures from it will necessarily bring the legislation authorizing it within the prohibition. The amendment is aimed against the perpetration of injustice, and the exercise of arbitrary power to that end. The position that unequal taxation is not within the scope of its prohibitory clause would give to it a singular meaning. It is a matter of history that unequal and discriminating taxation, levelled against special classes, has been the fruitful means of oppressions, and the cause of more commotions and disturbance in society, of insurrections and revolutions, than any other cause in the [fol. 193] world.'

"It seems plain enough that we have in the present case 'a carefully devised scheme to produce such inequality; or a scheme, if not so devised, necessarily producing that result.' "

There are certain distinctions between the Act here under review and the Indiana Act, considered in the above cited case. The Indiana act appears to have applied to all stores, whether wholesale or retail, while the Florida Act applies only to retail stores, the stocks carried therein, and held in storage to be sold in or through such stores. There is a difference also in the amount of the license fees. Under the Indiana Act, the license fees run from $3.00 for a single store to a maximum of $25.00 for each store in excess of twenty stores when owned and operated under a single ownership whereas under the act here in question the fees run from $5.00 to $50.00. But the most marked difference between the two acts is that the Florida act provides a considerably higher license fee for the same number of stores (in excess of one store) under a single ownership where any of such stores are located in more than one county.

The North Carolina Act, which was also upheld by the Federal Supreme Court by a memorandum decision, on October 26, 1931 (Great Atlantic & Pacific Tea Co. vs. Maxwell) did not embrace an ascending graduated scale of

fees, but merely provided for a license tax of $50.00 on each store in excess of one store where two or more stores were under the same management, supervision or ownership, the [fol. 194] motion to dismiss the amended bill in this case, like a demurrer, admits all facts well pleaded in the amended bill. Taking these facts as true, as we must in reviewing the action of the lower court on the motion to dismiss, my conclusion is that the court below erred in granting such motion and in denying the temporary restraining order. For under the principles heretofore enunciated by this court, and by the Supreme Court of the United States, including the recent case of State Board of Tax Commissioners v. Jackson, supra, said Chapter 15624 would be unconstitutional as applied to these appellants, if the facts alleged in the amended bill are true, on the ground that as applied to appellants the act constitutes an arbitrary and unreasonable classification for taxation purposes, contrary to the due process and equal protection clauses of the Federal Constitution and similar provisions in the preamble and sections 1, 4 and 12 of the Declaration of Rights of our State Constitution. It is my opinion that the facts alleged in the amended bill are sufficient to require the defendants to answer, and that the motion to dismiss was erroneously granted.

It would also appear that those provisions of the act which require increased or higher license fees on multiple stores under the same general management, supervision or ownership, where the same are located in more than one county, are so arbitrary and unreasonable on their face as to render them unconstitutional and to require that they be regarded as eliminated from the act. We cannot see where [fol. 195] they have any just or reasonable relation to the object of the act. Under these provisions for instance, a man owning the same number of stores as another man would have to pay a much higher tax per store if he had one of them in an adjoining county, regardless of value or volume of business. This is also contrary to that geographical uniformity which is referred to in Sheip Co. vs. Amos, supra. We cannot see wherein county lines are material in a State license statute of this nature. Any given number of stores located in a populous county might do a much larger business than the same number scattered

throughout a number of small counties, sparsely populated. Under this act the owner of 37 Whiddon Stores in Duval County, referred to in the bill, would have to pay total license fees amounting to $510.00, or $13.78 per store. If he decided to located one store at Fernandina, the addition of this one store would make him liable under the act to license fees on 38 stores, totaling $755.00, or $19.60 per store. Thus by establishing one store across the county line his taxes would be increased $250.00, or nearly 50%. His 37 stores in Jacksonville would remain exactly as before, yet the tax on them would be increased nearly 50% merely because one store was opened in an adjoining county. Such artificial and law made disparagement of the rights of one citizen and tax payer in favor of another certainly does not comport with our constitutional guarantees of "equal civil rights" and "equal protection of the laws." Such an arbitrary classification in a state license tax based on mere county lines, is "classification gone wild."

"The citizen's right to pursue any lawful business is [fol. 196] property that cannot be taken from him without due process of law, and is one of the privileges of a citizen of the United States of which he cannot be deprived without invading his liberty. The legislature may not, under the guise of protecting public interests, arbitrarily interfere with private business or impose unusual and unnecessary restrictions on lawful occupations. This was the holding in State v. Rose, 97 Fla. 710, 122 So. 225. In the opinion by Mr. Justice Ellis in the Rose case, the case of Marymount v. Nevada Banking Board, 111 Pac. 295, 32 L. R. A. (N. S.) 477, was cited, in which case the Court said that "The right to do a grocery or drygoods business is available to all citizens and no grant from the sovereign is essential to its existence." Some others of our Florida cases dealing with the subject of the equal protection of the laws, or as our Declaration of Rights expresses it, "all men are equal before the law," are State v. Bryan, 87 Fla. 57, 99 So. 327; Stewart v. Stearns & Culver Lumber Co., 56 Fla. 570, 48 So. 19, 24 L. R. A. (N. S.) 649; Harper v. Galloway, 58 Fla. 255, 51 So. 236, 26 L. R. A. (N. S.) 794, 19 Anno. Cases 235; S. A. L. R. Co. v. Simon, 56 Fla. 545, 557, 47 So. 1005; Ex Parte Messer, 87 Fla. 92, 99 So. 330; Ex Parte Smith, 128 So. 864; Teuton vs. Thomas, 128 So.

330; Motes v. Hagan, 132 So. 676; L. & N. R. Co. v. Amos, 98 Fla. 350, 124 So. 745; State ex rel. Davis v. City of Stuart, 97 Fla. 69, 120 So. 335.

There is very little, if any conflict, in the statement of the general principles which must be observed in order for legislative classifications to square with the constitution, between the majority and minority opinions of the Federal Supreme Court in the Jackson case, above quoted from. The minority opinion in effect supplements the statement of the doctrine enunciated in the majority opinion by adding thereto a qualification which has long [fol. 197] been recognized by this court, as a reading of the cases in the preceding paragraph will show, i. e., that such classification should not be merely arbitrary, but the differences on which it is based must have some just and reasonable relation to the subject or object of the legislation and the attempted classification. See the text of the able opinion of Mr. Justice Whitfield in the Simon case, supra, 56 Fla. 554 to 557, 47 So. 1002 to 1005. So, in order to get a complete view of the law on this subject, both the majority and minority opinion in the Jackson case must be considered. The chief difference between the two opinions lies in the analysis of the facts and the application of the law to the facts. The writer is further inclined to the view that under our former decisions, as applied to the state of facts alleged in the bill, the act here in question creates an arbitrary classification as to render it unconstitutional and void.

I am, however, inclined to concur in the conclusion reached by the learned Circuit Judge that the statute here under review was lawfully enacted, on so far as the same was attacked by the bill on the ground that the subject dealt with by it was not within the Governor's call. It is not contended that the act, as finally adopted, was not adopted by a "two-thirds vote of each house," as required by section 8 of Art. IV. of the Constitution. The contention is that certain amendments and the motion of concurrence in the House were not adopted by a two-thirds vote.

My view is that the order of the court below dismissing the amended bill and denying the application for temporary injunction should be reversed, and the cause remanded for further appropriate proceedings.

Ellis, J., concurs.

[fol. 198] IN SUPREME COURT OF FLORIDA, JANUARY TERM, A. D. 1932

LOUIS K. LIGGETT COMPANY, et al., Appellants,

vs.

ERNEST AMOS, as Comptroller of the State of Florida, et al., Appellees

An Appeal from the Circuit Court for Leon County

JUDGMENT—April 4, 1932

This cause having heretofore been submitted to the Court upon the transcript of the record of the decree herein, and briefs and arguments of counsel for the respective parties, and the record having been seen and inspected, and the Court being now advised of its judgment to be given in the premises, it seems to the Court that there is no error in the said decree; it is, therefore, considered, ordered and [fols. 199 & 200] decreed by the Court that the said decree of the Circuit Court be and the same is hereby affirmed; it is further ordered by the Court that the Appellees do have and recover of and from the Appellants their costs by them in this behalf expended, which costs are taxed in the sum of $—, all of which is ordered to be certified to the Court below.

The Opinion of the Court in this cause prepared by Mr. Justice Terrell was this day ordered to be filed.

[fol. 201] IN SUPREME COURT OF FLORIDA

[Title omitted]

AMENDED PETITION FOR REHEARING—Filed May 4, 1932

Come now the Appellants in said cause, and respectfully petition the Court to grant a rehearing in said cause, on account of the following omissions and causes why, as the appellants believe, the majority opinion and decree of the Court of April 4, 1932, are erroneous:

I

The majority opinion sustaining and upholding the classifications and discriminations created by sub-sections 1, 2, 4, 6, 8 and 10 of Section V of Chapter 15624, Laws of Florida, 1931, is predicated upon the following pronouncements contained in said opinion:

[fol. 202] "The record discloses material points of difference between chain stores and independently owned units. Such differences consist in method of management, group control of store operation, frequent turn over, cooperative advertising, cooperative buying, suitable location, display of goods, training of employees, the combination of wholesale and retail functions under one control, and serving the public in the manner the public desires to be served. These differences were ample basis for the classification complained of."

"Appellants assert that like advantages are available to independent owned stores and when properly applied will produce the same or similar results. This assertion may be true in part but in the nature of things it cannot be true as a whole. It is common knowledge that the chain store possesses many distinguishing features that give it an advantage over the independent store dealing in the same commodities. Its method of integration for purposes of cooperative buying, community advertising, traffic in 'selling talk', displaying, serving the public, unqualified control of wholesaling and retailing, and commanding capital could, under no circumstances become available to the independent store with such results as flow therefrom to the chain store."

Appellants respectfully suggest that the aforesaid pronouncements seem to partake of the nature of a judicial edict, which disregards the specific facts and ultimate facts [fol. 203] to the contrary set up in appellants' sworn bill and petitions of intervention, which facts are admitted by appellees' motion to dismiss.

See—

Payne v. Central P. R. Co., 255 U. S. 228, 232, 65 L. ed. 598, 601;

Hill v. Wallace, 259 U. S. 44, 61, 66 L. ed. 822, 827;

National Remedy Co. v. Hyde, 50 Fed. (2) 1066;

Hopkins Fed. Eq. Rules (7th ed.), p. 198.

The Supreme Court of the United States has so often held that a demurrer to a bill, or a motion to dismiss a bill, admits all averments well pleaded that the Court seldom, if ever, cites Fed. Eq. Rule 29 in that behalf.

The following are additional decisions of that Court where the Court reversed lower Courts because, on demurrer or motion to dismiss, bills for injunction, the averments having been admitted, were erroneously dismissed and injunction denied:

Ft. Smith & Western R. Co. v. Mills, 253 U. S. 206, 209, 64 L. ed. 862, 863—Railroad Strike.

Street v. Lincoln Safe & Deposit Co., 254 U. S. 88, 89, 65 L. ed. 151, 152—Liquor Storage.

Regal Drug Corporation v. Wardell, 260 U. S. 386, 388, 67 L. ed. 318, 320—Liquor License Tax.

B. & O. R. Co. v. U. S., 264 U. S. 258, 262-263, 68 L. ed. 667, 673—Order I. C. C.

Buck v. Kuykendall, 267 U. S. 307, 314, 69 L. ed. 623, 626—Use Motor Vehicles.

Geo. W. Bush & Sons Co. v. Maloy, 267 U. S. 317, 324, 69 L. ed. 627, 628—Use Motor Vehicles.

Real Silk Hosiery Mills v. Portland, 268 U. S. 325, 335, 69 L. ed. 982, 985—License Tax.

Anderson v. Ship Owners Assn., 272 U. S. 359, 364, 71 L. ed. 298, 302—Anti Trust Violation.

L. G. & E. Co. v. Coleman, 277 U. S. 32, 36, 72 L. ed. 770, 773—Privilege Tax.

In this behalf appellants respectfully request attention to the averments of § XIV of the bill (R. 60 to 75); also in § IX (R. 40 to 45); and § XI of the bill (R. 47 to 56); showing that "individually owned" store merchants not only may, but in Florida are now actually utilizing the same methods as chain stores, and are actually enjoying the same advantages; and that there is a great diversity of methods of merchandising, financing, advertising and the like among chain stores merchants themselves; all of which matters are admitted by the motion to dismiss.

Appellants respectfully further suggest that the pronouncements of the Court above quoted appear to be comparable to legislative fiats, condemned by the Supreme Court of the United States. For example

Manley v. Georgia, 279 U. S. 1, 6,

where it is said:

"A statute creating a presumption that is arbitrary or [fol. 204] that operates to deny a fair opportunity to repel it violates the due process clause of the 14th amendment. * * * Mere legislative fiat may not take the place of fact in the determination of issues involving life, liberty and property."

And more recently, the Supreme Court, following the Manley case, affirmed the same rule in

Heiner v. Donnan, 76 L. ed. (Adv. 501, 506, 507 and 508), decided March 21, 1932,

where the Supreme Court said:

"That which is not in fact the taxpayers' income cannot be made such by calling it income."

"A statute creating a presumption which operates to deny fair opportunity to rebut it violates the due process clause of the 14th Amendment."

"If a legislative body is without power to enact as a rule of evidence a statute denying a litigant the right to prove the facts of his case, certainly the power cannot be made to emerge by putting the enactment in the guise of a rule of substantive law."

And appellants respectfully suggest that the above quoted pronouncements of the Court in the case at bar have operated to deny appellants any opportunity to establish by proof the facts set up in their sworn bill and in their sworn petitions of intervention.

[fol. 205] Appellants respectfully further mention that the majority opinion in this cause apparently approves Mr. Webster's definition of "due process" in the Dartmouth College case, and the Supreme Court of the United States has done likewise in many cases, notably

Hovey v. Elliott, 167 U. S. text 418.

Nevertheless it appears to appellants that the majority opinion in this cause overlooked the full significance of Mr. Webster's definition, for he said:

"By the law of the land is most clearly intended the general law; a law which hears before it condemns, which

proceeds upon inquiry, and renders judgment only after trial."

Whereas the Court's pronouncements above quoted shut off all "inquiry" and render judgment before trial.

The above quotations show that the majority opinion relies upon what is said to be a matter of common knowledge as to methods of merchandising, including methods of buying and financing, training of employees, etc., whereas the Supreme Court of the United States has in several well considered decisions pointed out that if such facts exist they may not be judicially noticed by the Court "and given effect without pleading or proof." See

First Natl. Bank v. Anderson, 269 U. S. 341, 354, 70 L. ed. 295, 305;

I. C. C. v. L. & N. R. Co., 227 U. S. 88, 93, 57 L. ed. 431, 434.

In Chaselton Corporation v. Sinclair, 264 U. S. 543, 548-549, 68 L. ed. 841, 844, the court pointed out that it might take judicial notice of changed conditions as a "ground for laying down a rule of law." Nevertheless the Court pointed out that the extent of such changes and the dates when they occurred are obviously facts which "should be carefully ascertained and carefully weighed, and this can be done more conveniently in the Supreme Court of the District than here. The evidence should be preserved so that if necessary it can be considered by this Court." Accordingly the case was reversed in order that such proceedings might be had.

In the case at bar appellants are given no such opportunity. The case of

Bronk v. Chas. H. Scott Co. (7 C. C. A.) 211 Fed. 338, 2nd headnote, and text supporting the same,

is another case squarely in point. See also

Hume v. Wright (Mo.), 274 S. W. 741.

See also:

Jones Commentaries on Evidence, 2nd ed. Vol. I, Par. 476.

These results appellants respectfully submit deprive them of their rights and property without due process of law,

and without the equal protection of the laws, within the definition of the recent case of

Brickerhoff-Faris Trust & Sav. Co. v. Hill, 281 U. S. 673, 74 L. ed. 1107, L. ed. headnotes 3, 4 and 8.

II

The sworn bill in this cause and the sworn petitions of intervention present a different factual situation and a [fol. 206] materially different statute from the factual situation and statute involved in the Indiana case, 283 U. S. 527. Moreover, the Supreme Court of the United States has clearly indicated in subsequent decisions an intention to restrict that decision to the particular case before the Court, rather than to regard it as creating general rules of law for general application in license tax cases. See

New State Ice Co. v. Liebmann, 76 L. ed. (Adv. 484, 485),

where the Court said:

"The control here asserted does not protect against monopoly, but tends to foster it. The aim is not to encourage competition, but to prevent it; not to regulate the business, but to preclude persons from engaging in it. * * *

The principle embedded in our constitutional system that there are certain essentials of liberty with which the State is not entitled to dispense in the interest of experiments. * * *

The opportunity to apply one's labor and skill in an ordinary occupation with proper regard for all reasonable regulations is no less entitled to protection."

And in the case of

Heiner v. Donnan, 76 L. ed. (Adv. text 518),

the minority opinion insisted that the Indiana chain store [fol. 207] case and the North Carolina Chain store case should control. Nevertheless the majority opinion held otherwise, as the quotations therefrom supra, show.

III

The cases chiefly relied upon in the majority opinion in this case can, as appellants believe, be easily distin-

guished from the case at bar. For example, the majority opinion cites two territorial cases, one from Hawaii, and the other from Alaska. As to those cases it may be observed first, that the 14th Amendment does not apply to territories of the United States. See

Farrington v. Tokushige, 273 U. S. 284, 299, 71 L. ed. 646, 651.

The Fifth Amendment does apply, but that amendment does not carry any "equal protection of the laws clause," which is one of the chief matters relied upon by the appellants in this case. The power of Congress over territories is given by Art. 4, sec. 3, clause 2 of the Constitution, and is absolute. See

U. S. C. A. "Constitution," Part 2, pp. 423 and 424.

A further distinction as to the case of Toyota v. Territory of Hawaii, 226 U. S. 184, 57 L. ed. 180, lies in the difference in population and difference in value of the privilege. It appeared by the opinion that the great bulk of the business of the territory is done in Honolulu. We have many [fol. 208] similar statutes where the amount of license fees is based on population. See Revised General Statutes, § 809, Automobile agencies; § 822, auctioneers; § 823, abstractors of title; § 860, laundries; § 887, electric light plants; § 891, florists; § 900, gas plants; § 972, shows. But in all such cases the license fee is regulated by the population of the place where the business is conducted, and there is no provision for increasing the fee to be paid in one place simply by reason of the fact that the owner operates a similar business in other places or in other counties. The scheme provided by the sub-sections of sec. V of the Act in question for increasing the license fee, first depending upon the number of places in a single county, and second, the number of places in different counties, is an entirely new scheme of taxation in Florida, and wholly unlike that involved in the Hawaii case.

As to the Alaska canned fish case, there is a further distinction in that Congress, through its delegated agency, the territorial legislature had power to use the license tax not only to raise revenue, but to restrict the industry and thereby conserve a natural resource. The opinion says:

"To prevent the territory from doing away with all protection in a short sighted rush for fish."

It thus appears that the statute was designed primarily for the protection of game and fish. Such cases fall in a class by themselves, as lately recognized in the majority opinion of the Supreme Court delivered in New State Ice Company v. Liebmann, 76 L. ed. (Adv. text 484, second [fol. 209] column.) Such a basis of classification has no application to any of the appellants.

In like manner appellants respectfully seek leave to distinguish other cases relied upon to support the majority opinion.

IV

The Court overlooked the point made by the sworn bill of complaint and sworn petitions of intervention, that sub-sections 1, 3, 5, 7, 9 and 11, of section V of the Act in question, in undertaking to discriminate in favor of the local merchants of any particular County as against all non-residents thereof, operate to discriminate against citizens of other States, such as many of the appellants; all of which is in derogation of art. 4, § 2 of the Federal Constitution, as illustrated by the cases quoted pages 223, 224 and 231 of printed brief for appellants filed in this cause, and as further illustrated by

Travis v. Yale & Towne Mfg. Co., 252 U. S. 60, 79, 64 L. ed. 460, 469.

V

Appellants respectfully suggest that equality of treatment under the equal protection of the laws clause of the 14th Amendment, and section 1 of the Florida Declaration of Rights should be the test for determining the validity of sub-sections 1, 3, 5, 7, 9 and 11, of section V of the Act in question, rather than arbitrariness to the extent of op- [fol. 210] pression and confiscation, as asserted by the majority opinion, top page 17 thereof.

VI

The following pronouncement of the majority opinion:

"Owners of chain stores are classified on two bases and all in each class are treated alike. If located in different counties the necessary implication of larger volume, wider circulation, growing profits, business expansion and larger

opportunity under group control must follow. These facts are ample to support that classification."

seems to have overlooked or to have disregarded the specific facts and ultimate facts set forth in appellants' sworn bill and sworn petitions of intervention, thereby depriving appellants of their rights and properties without due process of law, and without equal protection of the laws, contrary to the 14th Amendment, as more specifically set forth in section I of this petition.

VII

The majority opinion bottom of page 20 says:

"We know of no reason nor do appellants cite any for relieving superior skill, initiative, and industry from the payment of a tax."

[fol. 211] The appellants respectfully say that they have made no contention to the effect that superior skill, initiative and industry should escape and mediocrity be taxed. On the contrary, appellants have contended that in fixing the amounts of license taxes, no member of the same class should have a law made advantage over another, in order to exercise the inalienable right of engaging in any of the common occupations of life; and appellants submit that the case of

New State Ice Company v. Liebmann, 76 L. ed. (Adv. 479),

quoted in section II of this petition, sustains that view. It required the Sixteenth Amendment to authorize the Federal Government to levy an income tax. Many States such as North Carolina levy income taxes, whereas art. 9, § 11 of the Florida Constitution prohibits any income tax in this State. That prohibition, coupled with the requirement of equal civil rights, contained in § 1 of the Florida Declaration of Rights, entitles every merchant to the same treatment without regard to skill, initiative or other personal qualifications; otherwise the skillful surgeon who perhaps makes $1,000.00 a day should pay several hundred times as much license fee to practice his profession as a doctor of mediocre ability.

VIII

The extracts quoted from the majority opinion in sections I, VI and VII of this petition, and other related parts of said opinion show, as appellants respectfully sug- [fol. 212] gest, that the Court overlooked a further point made by appellants' sworn bill and sworn petitions of intervention that the so-called differences and supposed advantages, if they exist, are enjoyed, if enjoyed at all, by appellants beyond the State of Florida, and, therefore, may not be seized upon as a basis of classification and discrimination for the imposition of high license fees to do business within the State of Florida. See pages 147 to 157 of printed brief for appellants. If the State of Florida can impose a high license tax for a privilege enjoyed elsewhere, every other State may do likewise, thereby accomplishing the complete destruction of those appellants who do business in many States, as shown by this record.

IX

As to the discrimination in favor of filling stations engaged exclusively in the sale of gasoline and other petroleum products, the majority opinion seems to have overlooked the discrimination among filling stations themselves, pointed out in the printed brief for appellants, pages 241 to 255, and the consequence thereof, as further pointed out in the same brief, page 255.

X

The majority opinion finds that the contention of appellants as to discriminatory administration of the Act, as complained in § XV. of the bill (R. 76 to 81) is without merit. The concurring opinion of Mr. Justice Davis, dealing with the same subject, says:

[fol. 213] "Appellants argue that the Comptroller's administration of the act is arbitrary and unreasonable * * * Assuming, but not deciding that all these complaints are true, and that the Act is in fact being so unjusti-ably enforced as to deny to appellants the equal protection of the laws by reason of its administration, appellants have a plain, complete and adequate remedy at law to coerce the non discriminatory administration of the Act by mandamus

against the tax officers to compel them to apply the provisions of the statute to all who are legally subject thereto. * * * Two wrongs do not make a right. Neither does the fact that tax officers commit a wrong in favor of one, entitle another to the privilege of that same wrong in his favor.

All citizens and taxpayers are entitled to a fair, impartial, just and equal administration of the revenue laws, which right, as this Court has pointed out, may be enforced by mandamus against officials who would try to do otherwise. The remedy for unequal administration is therefore not by injunction to cripple enforcement, but by mandamus to strengthen it."

These pronouncements, as it appears to appellants, are in direct conflict with recent decisions of the Supreme Court of the United States, and as well with prior decisions of this Court.

In the case of

[fol. 214] Iowa-Des Moines Nat. Bank v. Bennett, 52 S. Ct. 137, 76 L. Ed. (Adv. 164), decided December 4, 1931,

the last paragraph of the opinion said:

"The right invoked is that to equal treatment; and such treatment will be attained if either their competitors' taxes are increased or their own reduced. But it is well settled that a taxpayer who has been subjected to discriminatory taxation through the favoring of others in violation of federal law, cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have paid. Cumberland Coal Co. v. Board of Revision, — U. S. —, ante 131, 52 S. Ct. 48; Greene v. Louisville & Interurban R. Co. 244 U. S. 499, 514-518, 61 L. Ed. 1280, 1288-1290, 37 S. Ct. 673, Ann. Cas. 1917E 88; Chicago G. W. R. Co. v. Kendall, 266 U. S. 94, 98, 69 L. ed. 183, 188, 45 S. Ct. 55; Sioux City Bridge Co. v. Dakota County, 260 U. S. 441, 67 L. Ed. 340, 28 A. L. R. 979, 43 S. Ct. 190. Nor may he be remitted to the necessity of awaiting such action by the state officials upon their own initiative. Montana Nat. Bank v. Yellowstone County, 267 U. S. 499, 72 L. Ed. 673, 48 S. Ct. 331."

Some of the cases cited in this text, notably the Greene case, (see last paragraph thereof) were cited and followed by this Court in the case of

[fol. 215] L. & N. R. Co. v. Amos, 98 Fla. 350, 123 So. 745.

See also:

Cooey v. Johnson, 95 Fla. 946, 117 So. 111;

Folsom v. Bank of Greenwood, 97 Fla. 426, 120 So. 317;

Roberts v. American Natl. Bank of Pensacola, 97 Fla. 411, 121 So. 554.

On account of the aforesaid matters severally, these appellants now respectfully submit that the majority opinions rendered in said cause, and the decree of the Court of April 4, 1932, are erroneous.

Wherefore appellants pray that a rehearing in said cause be granted, and that the decree of the court below be reversed.

Respectfully submitted.

Kay, Adams, Ragland & Kurz, by Thos. B. Adams, Attorneys for Appellants.

[fols. 216 & 217] In Supreme Court of Florida, January Term, A. D. 1932

[Title omitted]

Order Denying Rehearing—May 19, 1932

A petition for rehearing having been filed in this cause and same having been duly considered it is ordered by the Court that the said petition be and the same is hereby denied.

[fol. 218] IN SUPREME COURT OF FLORIDA

LOUIS K. LIGGETT COMPANY, a Corporation; WINN & LOVETT Grocery Company, a Corporation; Paxson's, Inc., a Corporation; The Nunnally Company, a Corporation; Mellville Shoe Corporation, a Corporation; G. R. Kinney Shoe Company, a Corporation; J. C. Penney Company, a Corporation; F. W. Woolworth Company, a Corporation; Montgomery Ward & Company, a Corporation; The Great Atlantic & Pacific Tea Company, a Corporation; United Cigar Stores Company, a Corporation; Southern Stores Corporation, a Corporation, and South Florida Stores Corporation, a Corporation, Appellants,

vs.

ERNEST AMOS, as Comptroller of the State of Florida; R. B. Council, as Tax Collector of Leon County, Florida, and R. F. Bowden, as Tax Collector of Duval County, Florida, Appellees.

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA TO THE SUPREME COURT OF THE UNITED STATES —Filed July 26, 1932

To Honorable Rivers Buford, Chief Justice of the Supreme Court of Florida, and/or to the Supreme Court of Florida:

Louis K. Liggett Company, a Corporation, and the several appellants named in the above styled cause, your petitioners, respectfully show:

[fol. 219] 1. That Louis K. Liggett Company, a Corporation, and each of the parties named as appellants in the foregoing cause, are new appellants seeking a review by the Supreme Court of the United States of the orders and judgments of the Supreme Court of Florida rendered in said cause.

2. That on November 12, 1931, your petitioners Louis K. Liggett Company, a Corporation, Winn & Lovett Grocery Company, a Corporation, and Paxson's Inc. a Corporation, filed their amended bill in the Circuit Court in and for Leon County, Florida, against the above named appellees, Ernest

Amos as Comptroller of the State of Florida, R. B. Council as Tax Collector of Leon County Florida, and R. F. Bowden as Tax Collector of Duval County, Florida, seeking to have Chapter 15624 Laws of Florida, 1931, and the several sections thereof adjudged invalid, and to procure an injunction restraining said appellees from enforcing the provisions of said Act, attempting to provide for the payment of certain license and excise taxes for doing business within the State of Florida. That on the same day your Petitioner, The Nunnally Company, filed in said Circuit Court its petition of intervention, adopting the averments of said amended bill, and seeking the same relief as sought by the complainants named in said bill. That on the same day your petitioners Mellville Shoe Corporation, G. R. Kinney Shoe Company, J. C. Penney Company, F. W. Woolworth Company, Montgomery Ward & Company, The Great Atlantic & Pacific Tea Company, United Cigar Stores Company, Southern Stores Corporation and South Florida Stores Corporation, severally filed their petitions of intervention in said Circuit, adopting the provisions and averments of said amended bill of complaint, and seeking the same relief against the enforcement of said statute. That [fol. 220] all of said petitions of intervention were duly allowed by said Circuit Court. That on the 15th day of December, 1931, the Judge of said Circuit Court denied the temporary restraining order prayed for by said appellants, and granted the motion of said appellees to dismiss said amended bill, and thereupon dismissed said amended bill at the costs of said appellants.

3. That an appeal was duly taken from the decree of said Circuit Court to the said Supreme Court of Florida, and on the 4th day of April, A. D. 1932, said Supreme Court of Florida rendered its opinion, judgment and decree affirming the said decree of said Circuit Court. That thereafter your petitioners duly filed in said Supreme Court their Petition for Rehearing, which said petition was denied by the Supreme Court of Florida on the 19th day of May, A. D. 1932.

4. That in said cause there is drawn in question the validity of said Chapter 15624 Laws of Florida, 1931, on the ground of its being repugnant to the Constitution of

the United States, and the decision and judgment of said Supreme Court of Florida is in favor of its validity within the purview of 28 U. S. C. A., § 344-a, in that:

(a) The several subsections 1, 2, 4, 6, 8 and 10 of section 5 of said Act, as applied to the factual situation set forth in said amended bill, and admitted by the motion to dismiss, created arbitrary and unreasonable discriminations between single store retail merchants and chain store retail merchants doing business in the same County, contrary to the due process clause and equal protection of the laws clause of the 14th Amendment to the Constitution of the United States.

[fol. 221] (b) The several sub-sections 1 to 11, inclusive, of section 5 of said Act, as applied to the factual situation set up in the amended bill, admitted by the motion to dismiss, created arbitrary and unreasonable discriminations between retail merchants doing business in only one County, and merchants, such as appellants severally, doing business in different Counties of the State of Florida, contrary to the due process clause and the equal protection of the laws clause of the 14th Amendment to the Federal Constitution.

(c) That sec. 11 of said Act, undertaking to provide for County and municipal license taxes for retail merchants affected by said Act, is predicated upon and graduated by the arbitrary State license fees created by sec. 5 of said Act, and is therefore void for the same reasons pointed out with respect to sec. 5 of said Act.

(d) That the provisions of sec. 8, the last clause of sec. 5, and sec. 2 of said Act, exempting wholesale merchants, who remain subject to the license tax provided for by § 1197 Compiled General Laws of Florida, as applied to the factual situation set up on the amended bill, create arbitrary and unreasonable discriminations against all chain or multiple retail merchants who own and operate warehouses within the State of Florida, contrary to the due process clause and equal protection of the laws clause of the 14th Amendment to the Federal Constitution.

[fol. 222] (e) That the proviso contained in sec. 8 of said Act, undertaking to exempt filling stations engaged exclusively in the sale of gasoline and other petroleum prod-

uets, as applied to the factual situation set up in the amended bill, admitted by the motion to dismiss, creates an arbitrary and unreasonable discrimination and classification against all other owners of retail stores as defined in said Act, contrary to said clauses of said 14th Amendment.

(f) That secs. 5 and 11 of said Act undertake to utilize the interstate characteristics and incidents of operating many retail stores in Florida, in connection with the operation of similar retail stores in other States, as a basis for the discriminatory, arbitrary and unreasonable license taxes imposed upon appellants who are such operators, not imposed upon single store merchants, whose businesses do not have such characteristics, and thereby the interstate commerce and business so conducted outside of Florida by appellants is arbitrarily and unreasonably burdened and taxed contrary to the commerce clause, art. 1, sec. 8, of the Federal Constitution and contrary to the due process clause of said 14th Amendment.

That the invalidity of said parts of said Act renders the whole Act invalid as in violation of the due process clause and equal protection of the laws clause of said 14th amendment.

5. That in and by said amended bill and said petitions of intervention so filed in said Circuit Court, a title, right, privilege and immunity was specially set up and claimed by said appellants severally under the Constitution of the United States, within the purview of 28 U. S. C. A., sec. 344-b, in that in section 15 of said amended bill, adopted [fol. 223] by said intervenors, complaint was made that the appellee, Ernest Amos, as Comptroller of the State of Florida, had attempted to administer said Act so as to exempt furniture dealers, filling stations that sell tires and tubes, automobile dealers, cigar stores, restaurants, and sundry other classes of store operators, whether single store operators or chain store operators, and that by so administering said Act the said Comptroller was undertaking to create arbitrary and unreasonable discriminations and classification between appellants and other such store operators, contrary to the due process clause and equal protection of the laws clause of said 14th Amendment.

6. Your Petitioners would further show that a title, right, privilege and immunity was specially set up and claimed by said appellants severally under the due process clause of the 14th Amendment to the Federal Constitution, within the purview of 28 U. S. C. A., § 344-b, in that by the petition for rehearing in said cause they severally complained that the Supreme Court of Florida predicated its opinion and decree of affirmance largely upon an alleged factual situation claimed to be judicially noticed, contrary to the factual situation sworn to and set up in said amended bill and said petitions of intervention, and admitted by the motion to dismiss, and by so doing appellants severally were deprived of an opportunity to be heard on the facts, contrary to the due process clause of the 14th Amendment.

7. That all and singular the grounds of invalidity, and all and singular the titles, rights, privileges and immuni-[fol. 224] ties claimed as aforesaid, were overruled and denied by the Supreme Court of Florida, and the said statute and all the parts thereof, and all the acts of said Comptroller thereunder were in all respects sustained and held to be valid, anything in said amended bill or in said petitions of intervention to the contrary notwithstanding.

8. That the Supreme Court of Florida is the highest Court of the State of Florida to which said cause may be taken, and its judgment and decree affirming said order and decree of said Circuit Court, and the further order of said Supreme Court of Florida denying said petition for rehearing in said cause, are final.

9. That in said decree of said Circuit Court, and in the petition, judgment, decree and orders of said Supreme Court of Florida, certain errors were committed to the prejudice of your Petitioners severally, all of which will more in detail appear from the assignment of errors which is filed with this petition.

10. That on account of the proceedings aforesaid, had in said Circuit Court and in the Supreme Court of Florida, none of said appellants have paid the license taxes, fees and charges prescribed by said Chapter 15624, Laws of Florida, 1931, and appellants severally desire that pending their further appeal to the Supreme Court of the United States, a stay order may be granted, authorizing appellants

either to file within a definite period to be fixed by the Court, a bond sufficient to secure the payment of taxes which should have been paid by them severally, if said appeal is lost in the Supreme Court of the United States; or providing that appellants severally may pay into the hands of the Comptroller the amount of license taxes, fees, [fol. 225] etc. assessable under said Act, for the year beginning October 1, 1931, within the time to be fixed by the order upon this petition, and that in either such case the Appellees in this cause, and all those acting under their direction, may be required to stay the enforcement of said Act as to appellants severally pending the outcome of said appeal. And petitioners respectfully suggest that in as much as the amount of such license taxes and fees chargeable to them severally under said Act vary so greatly between a business such as Paxson's, Inc., operating only seven small shoe stores, and a business such as The Great Atlantic and Pacific Tea Company, operating 226 stores within the State, that it would be more practicable to use the latter alternative above suggested, that is to authorize the appellants severally to pay into the hands of the Comptroller the license taxes and fees chargeable to them severally, within a time to be fixed by the Court, and that upon so doing the appellees in said cause, and those acting under their direction, shall stay the enforcement of said Act as regards those appellants who shall comply with such order, pending the outcome of said appeal; and if, as a result of said appeal, said Act is held to be invalid, and the orders and decrees of said Supreme Court of Florida reversed, then the moneys so paid to the Comptroller shall be returned to the appellants depositing the same severally; otherwise said Comptroller shall retain the same as payment of the license taxes and fees chargeable and collectable under said Act.

That the order allowing appeal shall also fix the amount of cost bond, to be executed by one or more of the appellants.

[fol. 226] Wherefore Petitioners severally pray for the allowance of an appeal from said Supreme Court of Florida to the Supreme Court of the United States, in order that the decision, judgment, decree and orders of said Supreme Court of Florida may be examined and reversed.

And Petitioners also pray that a transcript of the record, proceedings and papers in said cause, duly authenticated by the Clerk of said Supreme Court of Florida, may be sent to the Supreme Court of the United States as provided by law.

This 26th day of July, A. D., 1932.

Thos. B. Allan, Roy M. Sterne, Attorneys for Petitioners and Proposed Appellants.

[fols. 227-233] And thereafter, to-wit, on the 26th day of July, A. D. 1932, the aforesaid Appellants filed in the Supreme Court of Florida their assignment of error on appeal from the Supreme Court of Florida to the Supreme Court of the United States which assignment of errors are in words and figures as follows, to-wit:

[Assignments of error omitted in printing.]

[fol. 234] IN SUPREME COURT OF FLORIDA

[Title omitted]

ORDER ALLOWING APPEAL FROM THE SUPREME COURT OF FLORIDA TO THE SUPREME COURT OF THE UNITED STATES—Filed July 26, 1932

The petition of Louis K. Liggett Company, a Corporation, et al., for an appeal in the above styled cause to the Supreme Court of the United States, from the Supreme Court of Florida, and the assignment of error filed therewith, and the record in said cause, having been considered, it is thereupon considered, ordered, and adjudged as follows:

1. That an appeal be and is hereby allowed to the Supreme Court of the United States from the Supreme Court of Florida, as prayed for in and by said Petition, and the Clerk of the Supreme Court of the State of Florida shall prepare and certify a transcript of the record and proceedings in the above cause, and forward the same to the

Supreme Court of the United States, within twenty (20) days from the date hereof.

2. It is further ordered that the said Louis K. Liggett Company, or some one of the appellants named in said petition for allowance of appeal, shall give good and sufficient security in the sum of One Thousand dollars, that said [fol. 235] appellants shall prosecute said appeal to effect, and if said appellants fail to make good their plea, such obligor appellant shall answer all costs by reason of said appeal; and one of said appellants, Winn & Lovett Grocery Company, now presenting a bond in the sum of One Thousand dollars, with Indemnity Insurance Company of North America, as Surety, it is further ordered that said bond be and the same is hereby approved as a cost bond in said cause.

3. And it further being made to appear to the Court that none of said appellants have paid the license taxes and fees required by Chapter 15624 for the current year beginning October 1, 1931, but that they were desirous of paying the amounts chargeable under said Act into the hands of the Comptroller, same to be retained by him in a special fund pending the outcome of said appeal, and to be retained by him as a payment of said taxes, fees, etc. if the judgment of said Supreme Court of Florida be affirmed, or if said appellants fail to prosecute their appeal to effect; OR if said appeal be sustained and said Act declared invalid the payments so made shall be returned to them severally; and the Court being fully advised in the premises, it is further ordered that said appellants be and they are hereby severally allowed to pay unto Ernest Amos, as Comptroller of the State of Florida, within thirty days from the date hereof, such amount as is chargeable to them severally for license taxes and fees, without the addition of penalties, as is provided by Chap. 15624, Laws of Florida, 1931; and upon making payment as aforesaid, within the time aforesaid, this appeal shall, as to such of the appellants as may make such payments, operate as a stay of the enforcement of said Act by the said Ernest Amos, Comptroller, and his successor in office, and those acting under his authority or direction, pending the determination of said appeal by the [fols. 236 & 237] Supreme Court of the United States; during which time said Comptroller and/or his successor in

office shall retain the monies so paid by the appellants severally in a separate fund, subject to the outcome of said appeal, and in the event said appeal shall result in an affirmance of the decision and judgment of the Supreme Court of Florida in said cause, the payments so made by appellants shall operate as payment of the license taxes and fees chargeable under said Act. That in the event said appeal results in the reversal of the judgment of the Supreme Court of Florida, and an adjudication that said Act is void and unenforceable, then the amounts so paid by the appellants severally shall be returned to them severally by the said Comptroller, or his successor in office, less amounts payable under the prior law.

Done and ordered this 26th day of July, A. D. 1932.

Rivers Buford, Chief Justice of the Supreme Court of Florida.

[fols. 238 & 239] Citation, in usual form, showing service on Cary D. Landis, filed July 26, 1932, omitted in printing.

[fols. 240-247] And thereafter, to-wit, on the 26th day of July, A. D. 1932, the Appellants aforesaid filed in the Supreme Court of Florida their cost bond on the appeal herein from the Supreme Court of Florida to the Supreme Court of the United States which cost bond with its approval by the Chief Justice of the Supreme Court of Florida is in words and figures as follows, to-wit:

Bond omitted in printing.

[fol. 248] IN SUPREME COURT OF FLORIDA

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed July 26, 1932

To Honorable G. T. Whitfield, Clerk Supreme Court of Florida:

In preparing the transcript of record for appeal in said cause from the Supreme Court of Florida to the Supreme Court of the United States, you will please include the following:

1. Copy the transcript of record in said cause in full as it came from the Circuit Court in and for Leon County, Florida, to the Supreme Court of Florida.

2. Copy the opinion of the Court (majority opinion) and the dissenting opinion of Justice Brown and Justice Ellis, rendered April 4, 1932, now reported 141 So. 153 to 171.

3. Copy the judgment and/or decree of affirmance entered April 4, 1932.

3. Copy amended Petition for Rehearing, showing filing date.

4. Copy order of the Court dated May 19, 1932, denying petition for rehearing.

[fol. 249] 5. Copy Petition for Appeal, showing filing date.

6. Copy Assignment of Errors, showing filing date.

7. Copy Order allowing Appeal showing filing date.

8. Copy Citation showing filing date, and acknowledgment of service upon counsel for Appellees.

9. Copy Cost Bond and Approval thereof.

10. Copy this Præcipe for Transcript.

11. Add your Certificate.

Thos. B. Adams, Roy M. Sterne, of Counsel for Appellants.

Copy of the foregoing præcipe received and further directions waived this July 26th, 1932.

Cary D. Landis, of Counsel for Appellees named in the foregoing case.

[fols. 250 & 251] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 252] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Aug. 13, 1932

Come now Louis K. Liggett Company, a Corporation, and the several appellants named in the appeal filed in the

above styled cause (R. 218 to 226) and severally adopt the Amended Assignments of Error filed August 10, 1932 as of July 26, 1932, as their statements of the points to be relied upon.

Appellants severally further state that in printing the record recital of filing only may be shown as to the following papers:

Title of paper	Record page
Original Bill of Complaint	1
Petition of Intervention by Paxson's Inc.	1
Motion to Dismiss Original Bill of Complaint	1
Order allowing Intervention by Paxson's Inc.	1
Order dismissing Original Bill	1
[fol. 253] Petition for Rehearing	3
Order granting Rehearing	10
Notice of Application for leave to file Amended Bill and for Temporary Restraining Order	11
Objections to filing Amended Bill	14
Stipulation of Counsel for preparation of Transcript in State Supreme Court	151
Assignments of Error filed July 26th, 1932	228 & 232
Certificate of Clerk of Circuit Court of Leon County, Florida	155
Cost Bond	240 to 246

That the following parts of the record as certified by the Clerk of the Supreme Court of Florida, and filed in this Court, are deemed necessary to be printed for the consideration of the points above set forth, i. e.:

Title of paper	Record page
Amended Bill of Complaint with all Exhibits therein referred to and made a part thereof, Nos. 1 to 7, inclusive, except exhibit No. 4, being certain pages from a newspaper hereinafter referred to	16 to 104
Motion to Dismiss Bill of Complaint	104
Affidavit of G. D. Wood	107
Exhibit 1 to affidavit of G. D. Wood	109
Order allowing Intervention of Southern Stores Corporation, et al.	115
Petition of Intervention of The Nunnally Company	116

Title of paper	Record page
Exhibit No. 1 to Petition of Intervention of The Nunnally Company	123
Petition of Intervention of Mellville Shoe Corporation, et al.	124
Petition of Invention of Southern Stores Corporation, et al.	137
Final Decree	143
Notice and Entry of Appeal to Supreme Court of Florida	145
[fol. 254] Assignments of Error to the Supreme Court of Florida	148
Submission to the Supreme Court of Florida January 7, 1932	156
Majority Opinion and Dissenting Opinion of the Supreme Court of Florida	157 to 197
Judgment and Decree of the Supreme Court of Florida affirming the lower Court	198 to 199
Amended Petition for Rehearing	201
Petition for Appeal to the Supreme Court of the United States	218 to 226
Amended Assignments of Error to the Supreme Court of the United States filed on August 10, 1932 as of July 26th, 1932, together with stipulation of counsel	234 to 236
Citation	238 to 239
Præcipe for Transcript by the Clerk of the Supreme Court of Florida	248 to 249
Certificate of Clerk of the Supreme Court of Florida	251

That Exhibit #4 to said amended bill of complaint may be supplied in lieu of printing the same to the extent of thirty copies furnished by counsel for appellants, the same to be utilized as far as they will go in the preparation of the requisite number of printed copies of the record.

That those parts of the record transmitted, but not to be printed, may be preserved for use by the Court or counsel as shall be deemed necessary.

Dated this August 10th, A. D., 1932.

Thos. B. Adams, Roy M. Stern, Counsel for Appellants.

[fol. 255] Copy of the foregoing designation of points to be relied upon and parts of record to be printed received, and the printing of the record as therein requested is hereby consented to this 10th day of August, A. D. 1932.

H. E. Carter, of Counsel for Appellees.

[fol. 256] In Supreme Court of Florida

[Title omitted]

Amended Assignments of Error on Appeal from the Supreme Court of Florida to the Supreme Court of the United States

The said Louis K. Liggett Company, and each of the other Appellants named in the petition for appeal filed in said cause, severally assign the following errors in the record and proceedings in said cause:

1. The Supreme Court of Florida erred by its decision, judgment and decree of April 4, 1932 (opinion reported 141 Southern 153-171) in affirming the decree of the Circuit Court in and for Leon County, Florida rendered in said cause, denying injunction and dismissing Appellants' bill, notwithstanding the invalidity of Chapter 15624 Laws of Florida, 1931, complained of in said bill as being contrary to the due process clause and equal protection of the laws clause of the Fourteenth Amendment to the Federal Constitution.

2. The Supreme Court of Florida erred by its decision, judgment and decree of April 4, 1932 in sustaining the validity of sub-sections 1, 2, 4, 6, 8 and 10 of Section 5 of Chapter 15624 Laws of Florida, 1931, notwithstanding [fol. 257] the averments of the amended bill in said cause, admitted by the motion to dismiss, pointed out that said sections of said Act create arbitrary and unreasonable discriminations between single store retail merchants and chain store or multiple retail store merchants doing business in the same county, contrary to the due process clause and the equal protection of the laws clause of said Fourteenth Amendment.

3. The Supreme Court of Florida erred by its decision, judgment and decree of April 4, 1932, in sustaining the

validity of sub-sections 1 to 11 inclusive, of section 5 of said Act, as applied to the factual situation set up in said amended bill, admitted by the motion to dismiss, notwithstanding said amended bill pointed out that said sub-sections of said Act created arbitrary and unreasonable discrimination between retail merchants doing business in only one county, whether single store merchants or chain store merchants, and retail merchants such as the Appellants severally, doing business in different counties of the State of Florida, contrary to the due process clause and the equal protection of the laws clause of said Fourteenth Amendment.

4. Said Supreme Court of Florida erred by its said decision, judgment and decree in sustaining the validity of Section 11 of said Act, notwithstanding the amended bill and petitions of intervention in said cause severally pointed out that said section created the same arbitrary and unreasonable classifications and discriminations with respect to county and municipal license taxes as were created by Section 5 of said Act in regard to state and county license taxes and fees, all contrary to the due process clause and the equal protection of the laws clause of said Fourteenth Amendment.

[fol. 258] 5. The Supreme Court of Florida erred by its said decision, judgment and decree of April 4, 1932, in sustaining the validity of the provision of Section 8 and of the last clause of Section 5, and of Section 2 of said Act exempting wholesale merchants who remain subject to the license tax provided by Section 1197 Compiled General Laws from the arbitrary and unreasonable discriminations contained in said Chapter 15624, although warehouses owned and operated by multiple retail store merchants in connection with their said businesses stand in the same relation to the retail units of such owners as the wholesale merchant stands to single retail store merchants, all contrary to the due process clause and the equal protection of the laws clause of said Fourteenth Amendment.

6. The Supreme Court of Florida erred by its said decision, judgment and decree of April 4, 1932, in sustaining the validity of the proviso contained in Section 8 of said Chapter 15624, undertaking to exempt filling stations engaged exclusively in the sale of gasoline and other petro-

leum products, notwithstanding the factual situation presented by said amended bill and said petitions of intervention severally, pointing out that said proviso creates an arbitrary and unreasonable classification and discrimination against all other owners of retail stores as defined by said Chapter 15624, contrary to the due process clause and the equal protection of the laws clause of said Fourteenth Amendment.

7. The Supreme Court of Florida erred by its said decision, judgment and decree of April 4, 1932, in sustaining [fol. 259] the validity of Sections 5 and 11 of said Act, undertaking to seize upon and utilize the interstate characteristics and incidents of Appellants' operation of many retail stores in Florida in connection with similar retail stores in other states as a basis for the discriminating, arbitrary and unreasonable classifications and license taxes and fees imposed upon Appellants severally but not imposed upon single store merchants whose businesses do not have such characteristics, thereby arbitrarily and unduly burdening and discriminating against the Appellants severally and their said businesses by virtue of such interstate characteristics, contrary to the commerce clause of Section 8, Article 1 of the Federal Constitution, and contrary to the due process clause of the Fourteenth Amendment to said Constitution.

8. The Supreme Court of Florida erred by its decision, judgment and decree of April 4, 1932 in sustaining the validity of the acts of said Comptroller of the State of Florida in his arbitrary and discriminatory administration of said Chapter 15624 Laws of Florida, 1931, by exempting from the license taxes and fees provided for thereby, furniture dealers, filling stations that sell tires and tubes, automobile dealers, cigar stores, restaurants and sundry other classes of store operators, regardless of whether single store operators or chain store operators, thereby depriving Appellants severally of due process of law and of equal protection of the laws, contrary to the Fourteenth Amendment to the Federal Constitution.

9. The Supreme Court of Florida, by its decision and/or judgment and decree of April 4, 1932 erred in predicating its said decision (majority opinion 141 So. 153, et seq.) upon a factual situation held to exist by reason of the Court's

[fol. 260] judicial knowledge contrary to the factual situation set up in Appellants' sworn bill and sworn petitions of intervention, which latter factual situation was admitted by the motion to dismiss filed by the Appellees, and thereby the said Supreme Court of Florida deprived the Appellants severally of an opportunity to be heard as to the true factual situation, contrary to the due process clause of the Fourteenth Amendment to the Federal Constitution, and the error of the said Supreme Court of Florida in that behalf was repeated and confirmed by the subsequent order denying Appellants' petition for a rehearing in which this specific matter was then called to the attention of said Supreme Court of Florida.

10. The Supreme Court of Florida erred in not holding the provisions of the Act of the Legislature of the State of Florida, entitled "An Act Requiring Licenses for the Operation, Maintenance, Opening or Establishment of Stores in this State; prescribing the License and Fees to be Paid Therefor, and the Disposition Thereof, and the Powers and Duties of the Comptroller of the State of Florida and the Tax Collectors of the Several Counties of the State in Connection Therewith, and Prescribing Penalties for the Violation Thereof," being Chapter 15624 of the Laws of Florida, 1931, to be unconstitutional and void because violative of the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

11. The Supreme Court of Florida erred in not holding the provisions of the said Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, to be unconstitutional because violative of the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

[fol. 261] 12. The Supreme Court of Florida erred in not holding the provisions of the said Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, discriminating in the rates of license fees by reason of the number of stores located in any one county to be unconstitutional and void because violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States.

13. The Supreme Court of Florida erred in not holding the provisions of the said Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, discriminating in the rates of license fees by reason of the number of stores located in any one county to be unconstitutional and void because violative of the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

14. The Supreme Court of Florida erred in not holding the provisions of the said Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, making the amount of license fees dependent upon the number of stores located in the same county or in different counties, to be unconstitutional and void because violative of the due process of the law clause of the Fourteenth Amendment to the Constitution of the United States.

15. The Supreme Court of Florida erred in not holding the provisions of the said Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, making the amount of license fees dependent upon the number of stores located in the same county or in different counties, to be unconstitutional [fol. 262] and void because violative of the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

16. The Supreme Court of Florida erred in refusing to allow the Appellants severally to show by their evidence that the Act of the Legislature of the State of Florida, entitled as aforesaid, being Chapter 15624 of the Laws of Florida, 1931, is arbitrary, unreasonable and discriminatory in its operation upon Appellants severally, and therefore unconstitutional and void because violative of the due process of law clause and the equal protection of the laws clause of the Fourteenth Amendment to the Constitution of the United States.

For which errors Louis K. Liggett Company and each of the other Appellants named in the petition for appeal filed in this cause severally pray that the said decision, judgment and decree of the Supreme Court of Florida, dated April

4, 1932, and the subsequent order of May 19, 1932 denying petition for rehearing, be reversed and a judgment rendered in favor of the said Appellants.

Thos. B. Adams, Roy M. Stern, Counsel for Appellants.

It is hereby stipulated between counsel that the foregoing Amended Assignments of Error may now be filed in said cause as of July 26, A. D. 1932, in lieu of the original Assignments of Error filed in said cause on the 26th day of July, 1932, and that a duly certified copy of the foregoing [fol. 263] Amended Assignments of Error may be forthwith transmitted to Washington and be printed in the record in lieu of the original Assignments of Error filed as aforesaid.

Dated this August 10, A. D. 1932.

Thos. B. Adams, of Counsel for Appellants. H. E. Carter, of Counsel for Appellees.

[fol. 264] In the Supreme Court of Florida

I, G. T. Whitfield, Clerk of the Supreme Court of Florida, do hereby certify that the foregoing pages, numbered 1 to 8, inclusive, contain a true, full and correct copy of Amended Assignment of Errors on appeal from the Supreme Court of Florida to the Supreme Court of the United States, filed in the Supreme Court of Florida on the 10th day of August, A. D. 1932, as of July 26th, 1932, as the same appears on file in my said office.

Witness my hand and the Seal of the Supreme Court of Florida at Tallahassee, Florida, this 10th day of August, A. D. 1932.

G. T. Whitfield, Clerk Supreme Court of Florida.
(Seal Supreme Court of Florida.)

[fol. 265] File endorsement omitted.]

Endorsed on cover: File No. 36,998. Florida Supreme Court. Term No. 301. Louis K. Liggett Company et al., appellants, vs. Ernest Amos, as Comptroller of the State of Florida; R. B. Council, as Tax Collector of the State of Florida, et al., etc. Filed August 15, 1932. File No. 36,998.